THE TRANSCENDENTAL VALUE OF CORPORATE DISCLOSURE RULES IN CORPORATE GOVERNANCE: NIGERIA AND UNITED KINGDOM PERSPECTIVES EXAMINED

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Abstract

The company serves as the main vehicle for driving economic growth. However, the company, as an economic entity, is managed and controlled by human actors. The corporate board manages the company for the benefit of shareholders. This divergence of ownership and management creates agency conflicts that corporate governance rules seek to solve. Nigeria's corporate legal/regulatory architecture has undergone several reviews. The latest include the NCCG 2018 and the CAMA enacted in 2020. This article investigates Nigeria's corporate legal/regulatory architecture and compares it with that of the UK to assess its efficiency. This investigation identifies the primacy of corporate disclosure rules to corporate governance and finds gaps in Nigeria's corporate disclosure rules. To improve Nigeria's corporate governance, the paper suggests improvements in Nigeria's corporate disclosure rules including a link between NCCG rules and the CAMA, and a regime of criminal sanctions for non-compliance with disclosure rules.

Key-Words: Corporate Governance, Directors' Obligations, Accountability, Disclosure Rules, Corporate Law/Regulation

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1. Introduction

Nigeria enacted the Companies and Allied Matters Act (CAMA) in 2020. The Act replaced the Companies and Allied Matters Act 1990. Attracting foreign investment and promoting economic growth are some of the reasons behind the plethora of corporate legal/regulatory reforms undertaken in Nigeria since the 1990s.[1] Desire for economic growth also influenced new innovations enhancing corporate administration under the CAMA 2020. This is understandable given what is often referred to as the positive correlation between good corporate governance practices and economic growth.[2]

Relying on the corporate platform to drive economic activities (especially in the common law world) dates back to the 13th century.[3] However, the major problem with the corporate vehicle as a means of driving business activities and achieving corporate goals is its inability to perform this primary function by itself since it does not have physical existence.[4] As a result, it depends on human organs to perform this function. This is the crux of the matter because of what commentators' term "the corporate form",[5] which is commonly associated with agency conflicts that arise when separation exists between a company's owners and managers.[6] The spate of corporate failures and related scandals involving major public companies[7] and financial institutions since the

[1] Some of the investor-friendly pieces of legislation enacted in the 1990s include the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act and Nigerian Investment and Promotion Commission Act etc.

[2] Carsten Gerner-Beuerie and Michael Schilig *Comparative Corporate Law* (Oxford University Press, 2019) 243; J Srem-Sai 'Corporate governance and the capital market in Ghana: the stymieing role of the state' *African Journal of International and Comparative Law*[2018] (26) 3 285, 286.

[3] Christopher C Nicholls, *Corporate Law* (Edmond Montgomery Publications Limited, 2006) 8-9.

[4] Per Justice Marshal in *Trustees of Dartmouth College v Woodward* (1819) 17 US (Wheat) 518, 636; see also per Lord Cairns in *Ferguson v Wilson* [1866] 2 Ch. Law Report, 77 at 88.

[5] Frank H Easterbrook and Daniel R Fischel, *The Economic Structure of Corporate Law* (Harvard, 199) 4-8.

[6] MB Lozano *et al*, 'Corporate governance, ownership and firm value: drivers of ownership as a good corporate governance mechanism International Business Review [2016] (25) 1333-1343, 1333; ASAP Salin *et al*, 'The influence of a board's ethical commitment on corporate governance in enhancing a company's corporate performance' *Journal of Financial Crime* [2019] (26) 2 496, 500.

[7]Stephen Bloomfield, *The Theory and Practice of Corporate Governance: An Integrated Approach* (Cambridge University Press, 2013) 3-6; Christine A Malin, *Corporate governance* (6th ed, Oxford University Press, 2018) 1-12; Y Ding 'Excessive ambitions of Chinese institutional shareholder activism: how much will they contribute to corporate

last quarter of the 20th century[8] has been attributed to corporate governance challenges directly linked to the separation of ownership and management and associated monitoring inefficiency.[9] The major common law jurisdictions of the UK and the US have introduced wide-ranging regulatory responses to contain the damage from corporate failures and to prevent them from occurring again.[10] The focus of such reforms has been on corporate disclosures[11] as a potential means of encouraging companies to operate with the objective of promoting long-term economic growth.[12]

It is noteworthy that the Nigerian corporate sector is not immune to corporate scandal, as evidenced in the collapse of the country's five major banks in 2008.[13] In fact, corporate failures have been a constant feature in every sector of the Nigerian economy since the 1990s.[14] This is why the main concern of this article is how the CAMA 2020 and other ancillary corporate regulations address corporate governance issues to enhance corporate performance.

The CAMA, which is the primary legislation for regulating business activities in Nigeria, assigns the power to manage a Nigerian company to the board of directors.[15] The general power granted to directors for managing the business of a company presents the potential risk of opportunistic behaviour since they manage the company (not for themselves but) for the benefit of the shareholders and other stakeholders. A variety of responses in the form of internal mechanism (such as directors duties and obligations, shareholders' rights, and board

governance conundrum?' *International Company and Commercial Law Review* [2023] (34) 11 635, 636.

[8] Salin *et al* (n.6) 497.

[9] Mallin(n.7) 18-19.

[10] Christopher M. Bruner 'Corporate governance reform in a time of crisis' *The Journal of Corporation Law* [2011] (36) 2 309, 309.

[11] For a detailed discussion on the focus on disclosure regulation in the UK, see Brenda Hannigan, *Company Law* (Oxford University Press) 393-414; see also G Adams, 'Company directors – balancing accountability against entrepreneurial freedom' *New Law Journal* [2002] (152) 7055 1677, 1679.

[12] D Arsalidou, 'Promoting long-term sustainable company growth through section 172 reporting and loyalty driven benefits' *Journal of Business Law* [2023] 5 390-406, 396.

[13] O Adeniyi, *Power Politics & Death: A Front Row Account of Nigeria under Late President Yar'Adua* (Kachifo Limited, 2011) 94-7.

[14] The Nigerian Deposit Insurance Corporation reported that 45 banks failed and have been liquidated in Nigeria since the 1990s, see http://www.ndic.gov.org>. A total of 27 airlines reportedly failed in the 1990s too, see AB Adeboye and A Musa, 'An evaluation of the failure pattern of defunct airlines in Nigeria' *Pacific Journal of Science and Technology* [2019] (20) 2 112-122.

[15] Section 87 CAMA.

structure) and other external mechanisms have been developed to deal with the challenges arising from the inconsistency of interests between managers and shareholders.[16] However, for large corporations (the focus of this article),[17] disclosure requirements have been identified as important components of governance needed to enhance the quality of information necessary for effective shareholder engagement ensuring business is conducted in an open and transparent manner.[18]

Since the focus of regulatory responses to corporate failure has been on corporate disclosures, this article analyses corporate disclosure rules and other components of corporate control mechanisms under the CAMA and the Nigerian Code of Corporate Governance (NCCG) in the next part of this article. The aim is to highlight some of the gaps that could provide the ground for opportunistic behaviour by company directors. This is important because the freedom enjoyed by company directors to make important business decisions has been identified as a major potential governance risk, especially in the common law jurisdictions.[19] An insight into corporate governance regulation in the UK will follow in part three. Since the Nigerian system is modelled after that of the UK,[20] this investigation will help to understand some of the reasons for the differences in the economic status of the two jurisdictions. Part 4 analyses the Nigerian and the UK systems to illustrate the differences in corporate disclosure rules between the two jurisdictions and their economic implications. Part 5 concludes the paper.

2.Corporate Governance Under Nigeria's Corporate Legal/Regulatory Architecture

Many studies have found that corporate governance significantly influences corporate performance.[21] This makes it important for any discussion on the subject of corporate governance to begin with an understanding of the term. There are many definitions of corporate

[16] Hannigan, (n.11) 105.
[17]The focus of this article are public companies, which are the main vehicles for the importation of investment capital, see M Giofré 'Financial education, investor protection and internal portfolio diversification' *Journal of International Money and Finance* [2017] (71) 111, 112-14.
[18]*Ibid*.
[19]Brian R Cheffins, 'The rise of corporate governance in the UK: when and why' *Current Legal Problems* [2015] (68) 1387, 387.
[20] Lorraine Talbot, *Progressive Corporate Governance for the 21st Century* (Routledge, 2013) 162-3.
[21] Raphael La Porta *et al*, 'Investor protection: origins consequences, reform' (1999) Harvard Institute of Economic Research discussion paper number (188) 1; Salin et al, (n 6) 500.

governance,[22] but for clarity, this article adopts the view of Brian Cheffins that "corporate governance encompasses the checks and balances affecting those who run companies".[23] The need for checks and balances was precipitated by the corporate form[24] that is based on the concept of separation between a company's owners and managers.[25] This separation created the potential for ownership and managerial interests to diverge.[26]

Despite the acknowledged divergence of interests, the CAMA places the day-to-day operations of business in the hands of corporate managers.[27] As a result, the managers have more information about a company's operations. Many commentators blame the spate of corporate scandals and failures on information asymmetry between corporate managers and shareholders.[28] This problem, which some authors term the 'central problem of corporate governance'[29] is addressed in the CAMA through a broad range of governance mechanisms. For example, the Act provides for directors' general duties (set out in section 305) and obligations as a means of subordinating their authority to the interest of the company and its shareholders. It also provides for oversight and disciplinary rights for shareholders and imposes disclosure obligations on directors[30]. In addition, Nigeria has issued principle-based guidelines in the NCCG that is designed to constrain the freedom of directors and make them focus on their core mandate of managing the company in the interest of the company and all the shareholders.[31] Duties and obligations governing company directors in Nigeria are discussed below.

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[22] M Domina 'The role of corporate governance in the protection of the alternative investment fund's investors' *Journal of International Banking Law and Regulation* [2021] (36) 5220, 222; D Chekroun and D Shagrin 'Organisational and corporate governance' International Business Law Journal [2013] 6 768.
[23] Cheffins, (n.19) 387.
[24] *Ibid*.
[25] Salin *et al*, (n.6) 500
[26] Adolf A Berle and Gardiner C Means, The Modern Corporate & Private Property (19th Print, Transaction Publishers, 2009) 66-11.
[27] CAMA, sec 87(4).
[28] Domina, (n.22) 221-22; P Sharma and S Sachdeva 'Minority shareholder activism in light of Indian companies act, 2013' *International Journal of Law and Management* [2022] (64) 5 418, 418-9; Ding (n.14) 636.
[29] DK Denis and JJ McConnel, 'International Corporate Governance' *Journal of Financial and Quantitative Analysis* [2003] (38) 11, 1; Stephen M Bainbridge, *The New Corporate Governance in Theory and Practice* (Oxford University Press, 2009) 6.
[30] In addition to mandating the loyalty of corporate managers secs 305 and 306, the CAMA also provides for avenues through which corporate managers would inform shareholders about how they are managing the company in secs 374, 378, and 387.
[31] CAMA, sec 309(1).

2.1 Duties and obligations of directors under the CAMA

The CAMA provides that "[a] Director of a company registered under this Act is a person duly appointed by the company to direct and manage the business of the company".[32] The Supreme Court of Nigeria has recognized the primacy of directors in corporate administration in the case *Baffa v Odili*.[33] As such, directors are authorized in section 87(3) to exercise all powers of management except those reserved for the general meeting. The authority granted to the board of directors finds further expression in section 87(4) which provides that directors are not to obey any authority or take instructions or directions from members in general meeting when acting within their powers under the Act or the company's articles.[34]

The vesting of authority to manage the company in directors raises concerns about the protection of shareholders which some authors argue is crucial because in many countries, the expropriation of minority shareholders by the human organs who act for the company is extensive.[35] This is especially concerning for "public" companies which are the main vehicles for the importation of external investment capital[36] needed to improve the economies of developing markets, including Nigeria. This is because, apart from the fact that shareholding in public companies is atomized and ownership is separate from management, the geographical spread of shareholders has made corporate administration more complex.[37] This is unlike most family or private companies where there is seldom any separation between management and governance as often the same people are the owners and the controllers so that those same individuals have management and shareholder roles.[38]Separation of ownership and management as is discussed by authors and emphasized[39] in the CAMA by virtue of the provisions of sections 87(1)-(4) and 269. It is to address this divergence that the Act provides for corporate control mechanisms to make corporate managers accountable. This is underscored by the legal position of directors classified in the Act as

[32]*Ibid*, sec 269(1).
[33] (2001) 17 NWLR (pt 737) 709 at 737.
[34] See also *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cunningham* (1906) 2 Ch 34 (Court of Appeal).
[35] La Porta *et al*, (n.21) 2.
[36] Giofré (n.17) 112-14; LE Enrique *et al*, 'Corporate law and securities market' in R Kraakman *et al*, *The Anatomy of Corporate Law: A Comparative and Functional Approach (*3rd ed, Oxford University Press, 2017) 243, 243.
[37] Bob Tricker, *Corporate Governance: Principles, Policies, and Practices* (4th ed, Oxford University Press, 2019) 2-7 Berle and Means (n.26) 66-111.
[38] Tricker *Ibid*, 4; John Birds *et alBoyle & Birds Company Law* (9th ed, Jordan Publishing Limited, 2019) 353.
[39] Mallin (n.7) 1-19; Bloomfield (n.7) 3-6.

"trustees of the company's moneys, properties (sic) and their powers and as such must account for all the monies over which they exercise their powers honestly in the interest of the company and all the shareholders"[40]. As trustees, directors are subject to the general common law duties of trustees,[41] which require them to display utmost good faith in accordance with the provisions of the law and the constitution of the company.[42] This may explain the codification of the general duties of directors and their classification as 'fiduciary duties' in section 305. To fully subject corporate managers to the common law duties of trustees, the Act also codified the 'no conflict rule' in section 306, and the 'duty of care and skill in section 308 to secure compliance. The duties and consequences of breach are discussed below to underscore their relevance to corporate accountability.

2.1.1 Fiduciary Duties

One of the governance mechanisms through which the CAMA seeks to minimize opportunistic behavior by corporate directors is the adoption of the fiduciary principle set out in section 305(1) and (2). The fiduciary duties of directors are owed to the company and directors must observe utmost good faith in any transactions with it or on its behalf.[43] Directors also owe fiduciary duties to shareholders in any transaction affecting shareholder interest. As fiduciaries, directors are obligated to act bona fide at all times in what they believe to be the interest of the company as a whole, so as to preserve its assets, further its business and promote the purpose for which it was formed.[44]

It is argued that fiduciary duties of directors are a reminder that any exercise of powers conferred on them by CAMA for improper purpose carries a consequence beyond the common law obligation to pay damages[45] as they are intended to manifest the broader equitable doctrine of fraud under the act.[46] In equity, a fiduciary is under obligation to make good losses suffered by the principal (company).[47] In addition, the no conflict common law rule which prohibits conflict between the personal interest and duty of an agent is codified in section 306(1). In this regard,

[40] CAMA s 309(1).
[41] A trustee's duty was well illustrated in the English case of *Regal Hastings v Gulliver* (1942) 1 All ER 378.
[42] CAMA, sec 305(1).
[43] See the confirmation of the fiduciary position of directors in the cases of *Okeowo v Miglore* (1979) 11 SC 133; *EMCO & Partners Ltd & Ors v Dorbeen (Nig) Ltd & Anor* (2017) LPELR-43453; *Usman & Anor v Jubril & Ors* (2019) LPELR-48792.
[44] CAMA sec 305(3).
[45] Hannigan (n.11) 274.
[46] *Eclairs Group Ltd v JKX Oil and Gas plc* [2016] 1 BCLC 1.
[47] *AIB Group (UK) plc v Redler (2014) 3 WLR 1367, 79-89*.

on no account shall a director's personal interest conflict with his duties as a director. Consequently, a director is under a duty not to make secret profit or exploit corporate assets, information, and opportunities.[48] Any receipt of money or a valuable benefit by a person who owes a fiduciary duty of loyalty to a principal (such as a company director to the company) must hold such benefit on trust for the principal.[49] Therefore, the fiduciary duty of directors is a clear disincentive to behave opportunistically.

2.1.2 Duties of Care and Skill

By section 308(1), 'every director of a company shall exercise the powers and discharge the duties of their office honestly, in good faith and in the best interest of the company, and shall exercise that degree of care, diligence and skill which a responsible, prudent director would exercise in comparable circumstances'. By introducing professionalism into the standard of care and skill, the CAMA has codified the objective standard of care and skill. Chris Wigwe has argued that the professional standard introduced in the CAMA is appropriate to check the enormous powers vested in company directors under section 87(3).[50] It also underscores the need for proper accountability for those (agents) who run the affairs of a company for the benefit of others to minimize the risk of value reducing conduct on their part.

It is one thing to provide for directors' duties and sundry checks on their activities in corporate statutes and ancillary regulations. However, ensuring that directors comply with their duties under the CAMA and follow other guidelines as prescribed in corporate legal/regulatory regimes is another matter. Provisions of the CAMA and the NCCG are explored below to highlight some of the controls and guidelines for corporate board control under the regimes.

2.2 Controls and Guidelines for Corporate Boards Under the CAMA and NCCG

The CAMA provides a variety of controls to rein in corporate managers. One such controls is the authority given to shareholders to oversee the operations of the corporate board and the power to discipline (including the power to dismiss) erring directors. The main argument in this paper is that shareholders' oversight rights and disciplinary powers can only be

[48] CAMA, sec 313.
[49] *FHR European Venture LLP v Cedar Capital Partners LLC* [2014] 2 BCLC 145, 32.
[50] Chris C Wigwe *Introduction to Company Law & Practice with Companies and Allied Matters Act 2020* (Princeton & Associates Publishing Company Ltd 2022) 295.

exercised if they become aware of misconduct that could jeopardise their interest. This invariably makes information (corporate disclosure) vital to the exercise of these powers. There are two aspects of corporate disclosures relevant in this regard. The first is the primary disclosure required in the form of directors' reports and accounts.[51] There is also the secondary but important requirement under the Act for directors to disclose their interests in any contract with the company (principal).[52] In addition to the controls provided in the CAMA, the NCCG also provides principle-based guidelines for Nigerian corporate boards (especially the boards of public companies) to ensure compliance with the law and the company's constitution. These controls are discussed below.

2.2.1 Controls under the CAMA

Three basic mechanisms are provided under the CAMA to check the powers of company directors to promoting corporate board accountability. The mechanisms exist as rights of shareholders to monitor, engage with, and discipline company directors. Oversight and sundry rights granted to shareholders in corporate statutes have been attributed to their position as the last in the corporate revenue distribution chain, which means they "have the strongest economic incentive to care about the residual claim, which means they have the greatest incentive to elect directors committed to maximizing firm profitability".[53]

The first of shareholder rights are participatory right. This includes the right to attend meetings and the right to vote on critical corporate policies and decisions.[54] In addition, the Act grants shareholders disciplinary powers, including the power to dismiss corporate managers.[55] Secondly, the CAMA grants shareholders access to information on how directors are conducting the company's business through various reports[56] that directors are mandated to prepare and present at the general meeting.[57] For example, section 374 requires every company to keep accounting records that can show and explain all transactions carried out by the company, and reasonably and accurately

[51] CAMA, secs 374-388.
[52] *Ibid*, sec 303.
[53] Bainbridge, (n 29) 50.
[54] CAMA, secs 107, 243 and 251.
[55] CAMA sec 288.
[56] See sundry reports that CAMA mandates directors to prepare under secs 374, 378 & 387.
[57] *Ibid*, sec 388.

disclose whenever required, the position of the company's finances among other requirements.[58]

Directors are also required to prepare financial statements (annual accounts) for each year. The content of financial statements is set out in 377(2). They are also required under section 385 to prepare directors' reports. The information obtainable from the records, statements and reports is crucial governance tool because they are the source of information that shareholders need to assess corporate board performance. It is this assessment that forms the basis for the exercise of their powers, such as the power to discipline the board[59] or to seek redress by applying to court for relief if they find that the affairs of the company are being conducted in an illegal and oppressive manner.[60]

Another crucial aspect of control of directors and controlling members is their prohibition from entering into any substantial property transaction with the company unless such transaction is first approved by a resolution of the company in general meeting after being informed of all the material facts relating to the transaction.[61] Section 311 of the CAMA provides for exceptions to the general provisions of section 310. However, the Act does not set any value or threshold for the requirement of shareholders' approval. "Non-cash asset" is defined in the CAMA in section 868 as 'any property or interest in property other than cash …'. It would appear that the purpose of requiring shareholder approval for such transactions is to check potential abuse by directors in their positions, as shareholder approval for such transactions allows such matters to be more properly considered and more objective decision to be reached.[62]
The requirement for shareholder approval for substantial property transactions could help to strengthen shareholders' control of company assets to prevent diminution of firm value. Any substantial property transaction in breach of the requirements of section 310 is voidable,[63] and the director and any other director who authorized the transaction or arrangement is liable to the company for any gain they have made[64] subject to certain defences.[65]

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[58]*Ibid*, sec 374(1)(a)-(c)
[59]*Ibid*, 288
[60]*Ibid*, secs 353 & 354. See also s 355 for a wide-ranging jurisdiction of the court to deal with director misconduct.
[61] *Ibid*, sec 310.
[62] See *British Racing Drivers' Club Ltd v Hextall Erskine & Co* [1997] 1 BCLC 182, 198.
[63] CAMA, sec 312(1).
[64]*Ibid* (3)(a).
[65]*Ibid*, (6).

Oversight rights and disciplinary powers granted to shareholders, and the extensive disclosure requirements that directors were required to comply with under the CAMA aim to nudge directors toward complying with their mandate to manage the affairs of the company faithfully in accordance with their duties under the act. It is arguable that shareholder information on how directors conduct the affairs of the company constitute the most important shareholder access to the internal workings of the company. Thus, the exercise of shareholder rights and powers granted under the Act may be dependent on their ability to effectively scrutinize directors' activities. The power of oversight and control will be lost where shareholders do not have information about the operations of the company. However, the question remains about the effectiveness of information flow from directors to shareholders' powers. These are some of the questions to be answered in section four.

The Nigerian Code of Corporate Governance[66] complements the CAMA with guidelines for directors in the exercise of their powers and the discharge of their obligations to shareholders of Nigerian companies, especially the listed companies. The stated aim of the Code is to promote corporate accountability and business prosperity by institutionalizing corporate governance best practices in Nigerian companies and promoting public awareness of essential corporate values and ethical practices to enhance the integrity of business.[67] To achieve this aim, the Code adopts a principle-based approach that places its implementation in the hands of the board of directors. In other words, the Code is a guide for directors on accountability and best practices. They are required to apply and explain how the principles are applied. This approach is termed "Apply and Explain".

As with the CAMA, the Code recognizes the board as the highest governing body in a company and its central role in corporate governance.[68]Three classes of directors are recognized under the Code as executive directors (EDs), non-executive directors (NEDs) and independent non-executive directors (INEDs). Although leadership of a Nigerian company is drawn from these three groups, it is the EDs and the Managing Director/Chief Executive (MD/CEO) (who is also an ED) who are responsible for the day-to-day management of the company.[69] The primary function of the board is to promote and protect the interests of the company among many others enumerated in Principle 4.4. This is in addition to the requirement that the board exercise oversight and control

[66] The Nigerian Corporate Governance Code (NCCG) 2018.
[67] *Ibid* at iv.
[68] *Ibid*, Principle 1.
[69] *Ibid* Principle 5.

to ensure that management acts in the best interest of shareholders and other stakeholders.[70]

The Code classifies directors and shareholders who own five percent (5%) of any class of securities as 'insiders' because they exercise control over a company's policy.[71] As a result, two strategies are adopted under the Code to protect the company and vulnerable shareholders. First is the delegation of some board functions to committees most of which are comprise NEDs and INEDs. The aim of having NEDs and INEDs populate board committees is to serve the interest of the company and the vulnerable groups as the qualifications for appointment to both offices will show. The NEDs are people chosen on the basis of their work experience, knowledge and personal qualities who are expected to bring those qualities to bear on the company's business.[72] The INEDs on the other hand, are required to represent a strong independent voice on the board in addition to being independent in character and judgment.[73] Among the many qualifications for appointment as an INED[74] is that such a person must not be a representative of a shareholder who has the ability to control or significantly influence management.[75]

Given the transcendental value of shareholder information, it is instructive that a significant portion of the Code is dedicated to the relationship between shareholders and the board.[76] Principle 22 provides for engagement with shareholders by establishing a system of regular dialogue with shareholders to balancing their needs, interests, and expectations with the company's objectives. The Code also provides for the protection of shareholders rights[77] with emphasis on equitable treatment of shareholders and the protection of their statutory rights and general rights as a means of promoting good governance. It is noteworthy that these rights are those granted under corporate statutes (e.g., CAMA), such as shareholders' oversight rights and disciplinary powers. The challenge, therefore, is how the protection of shareholders' rights can be guaranteed since implementation of the Code rests with directors who may be open to pursuing personal interests.

[70] *Ibid* Principle 1.
[71] NCCG, Principle 29.1.15.
[72] NCCG, Principle 6.1.
[73] *Ibid*, Principle 7.1; see also see Principle 7.2.1 for further qualifications for the position INED.
[74] See the broad range of restrictions on appointment of a person to the board as INED in Principle 7.2 generally.
[75] *Ibid*, 7.2.2
[76] See *Ibid* Part C.
[77] *Ibid*, Principle 23

It is the view of this article that providing opportunities for shareholders to act in defence of their statutory rights may be the best way to ensure the realization of such rights. The CAMA already grants them disciplinary power to rein in erring directors, and the right to approach the courts for relief when their interests are infringed upon. However, it is argued that knowledge of directors' activities is a prerequisite to the exercise of such rights and powers granted shareholders under the act. This is why disclosure rules are considered primary as a basis for knowledge of any corporate board misconduct that would trigger the exercise of the rights and powers granted by statute. Therefore, to promote good corporate governance as required under the NCCG will require effective and efficient disclosure rules and their faithful implementation. The UK corporate governance system is discussed below to underscore the differences in the corporate governance legal/regulatory architecture in the two jurisdictions.

3. **Corporate Governance in The UK**

The practice and challenges of corporate governance in the UK is as old as trade.[78] Bob Tricker noted that Shakespeare (1564-1616) underscored the problem 'in his play *The Merchant of Venice* where Antonio the merchant agonized as he watched his ships sail out of sight, with his fortune entrusted to others'.[79] The 17th century joint-stock companies with numerous stockholders elected directors to oversee their overseas operations. The need to raise capital to meet the financial needs of expanded trading activities in the 18th century created the market for overambitious and unscrupulous businessmen with unrealistic expectations who sought to exploit investors.[80] The collapse of the South Sea Company in 1720 is the major reference point for corporate excesses and risk-taking with profound negative outcomes that brought corporate challenges to the fore in that era.[81] The *Bubble Act* was enacted to address the corporate crisis in that era.[82] This has remained the trend in the modern era with the resort to shareholder-centric corporate governance reform focused on corporate accountability.[83]

Globalization has created a new challenge with the emergence of large and complex companies with numerous shareholders spread across different geographical locations.[84] This has created the need for more transparency and accountability, and a desire to increase investor

[78] Tricker, (n.37) 4.
[79] *Ibid*.
[80] *Ibid*, 5.
[81] Nicholls, (n.3) 11-12.
[82] *Ibid*.
[83] Bruner, (n.10) 309-310.
[84] Tricker, (n.37) 7-8.

confidence (among both potential and existing investors).[85] The UK has responded to the new challenge in several ways, such as strengthening investor protection mechanisms under the Companies Act 2006, the introduction of Corporate Governance Code (the most recent of which is the Corporate Governance Code 2018), and other ancillary rules and regulations.[86] Some of the legal/regulatory instruments are discussed below to illustrate how they might differ materially from the legal/regulatory regimes available in Nigeria.

3.1 Governance of the Corporation Under the UK CA 2006

Shareholders of UK companies and creditors are the focus of the UK company law.[87] The stock-market based system has its roots in the common law, which is of UK origin.[88] Dispersed shareholding and strong central management are identified as the hallmark of the system.[89] Those who manage the company are different from the owners (shareholders). This is underscored by the provisions of the UK CA. For

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example, section 154 of the Act makes it mandatory for every private company to have at least one director while every public company is required to have a minimum of two directors. It is arguable that the elaborate provision for the appointment of directors of public companies in section 160 of the Act demonstrates statutory recognition of separation of ownership from management of public companies in the UK.

The UK CA places the management of a UK company in the hands of corporate boards by virtue of Part IV of the act, which relates to a company's capacity, and powers of directors to bind a UK company. Directors' power to act for a company is confirmed in section 42(1), which gives directors broad power under the constitution of the company to bind the company or authorize others to do so in relation to anyone who is dealing with the company in good faith. The power of directors to manage a company's affairs is given further impetus in section 39(1) which provides that "the validity of an act done by the company shall not

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[85] Mallin, (n.7) 27.

[86] The Stock-Exchange Rules and Listing Rule (UK LR) are some of the other corporate governance regulations in the UK.

[87] ~~Derek French, Stephen Mayson and~~ Christopher, Ryan *Mayson. French & Ryan on Company Law* (38th ed, Oxford University Press, 2023) 30. See also D Griffin et al, 'National culture: the missing country-level determinant of corporate governance' *Journal of International Business Studies* [2017] (48)740, 743.

[88] James W Hurst, *The Legitimacy of the Business Corporation in the Law of the United States 1780-1970* (The University Press of Virginia, 1970) 4-7; Paul L Davies, *Gower's Principles of Modern Company Law* (6th ed, Sweet & Maxwell, 1977) 32-42.

[89] Bainbridge, (n.29) 6.

be called into question on the ground of lack of capacity by reason of anything in the constitution of the company".[90] The power granted directors to manage the affairs of UK companies was confirmed as long ago as 1857 in *Ernest v Nicholls*[91] where Lord Wensleydale stated that 'for the purpose of contract, the company exists only in the directors and officers acting by and according to the deed [the deed of settlement, equivalent in those days to the articles of association'.[92]

The divergence of interest between those who control the company and those who own it is recognized in the UK as several legal and regulatory controls are provided to promote corporate accountability. This is achieved in the UK CA under three main headings. First is through a broad range of directors' general duties based on equitable principles relating to fiduciaries duties, and the common law duties of care and skill.[93] The Act requires directors to act faithfully in promoting the interest of the company for the benefit of members.[94] This underscores the central position of shareholders as primary constituent whose interests the directors are required to have in contemplation while undertaking their duties under the act. Secondly, the internal division of power within the company grants shareholders oversight rights and disciplinary powers to enable them to deal with managerial conduct that may prejudice their interests.[95] Finally, the Act provides extensively for corporate disclosure rules[96] as a means of informing shareholders about directors' activities in the company.

In addition to directors' duties, shareholder rights and other corporate control mechanisms designed to ensure corporate board fealty,[97]other corporate governance regulations exist in the UK corporate governance architecture that provide another layer of protection for shareholders of UK listed companies. The UK CGC is one of such regulations. The Code provides standard-based guidelines on compliance with directors' duties and disclosure rules in the UK corporate legal/regulatory architecture. The controls and guidelines embedded in the UK CA and the UK Code are discussed below.

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[90] See also sec 44(3), which affirms the validity of any instrument signed-on behalf of a company by a director.
[91] (1857) 6 HL CAS 401.
[92] *Ibid*, 432.
[93] UK CA, secs 170-77.
[94] *Ibid*, 172(1).
[95] See the oversight and control powers granted shareholders in secs 160, 168, 224-32, 247, 262, 281-87.
[96] UK CA380-414.
[97] Mary Stokes 'Company Law and Legal Theory" in W Twinning (ed*) Legal Theory and Common Law* (BB Blackwell, 1986) 155 165.

3.1.1 Duties of Directors Under the UK CA: General and Fiduciary Duties

Discussion above shows that directors manage the business of a UK company, but they do that on behalf of the company and its shareholders. This is underscored by the general and fiduciary duties that directors are subject to under the act.[98] Section 170(1) emphasizes the general duties and their beneficiaries in the following words "[t]he general duties specified in sections 171-177 are owed by a director of a company to the company". However, the duty to promote the success of the company in section 172 establishes the primacy of shareholders as the ultimate beneficiaries of directors' duty. It provides that '[a] director of a company must act in a way he considers, in good faith, would be most likely to promote the success of the company for the benefit of members as a whole'.[99]

It is noted that directors are required to have regard to specific matters set out in section 172(1)(a)-(f). This is no more than consideration of those matters under what is termed 'enlightened shareholder value' (ESV) concept. This is to the effect that the principal obligation of directors is the success of the company in the collective best interests of shareholders, but that directors should also recognize the interest of other stakeholders.[100] However, details and arguments concerning the ESV concept are not relevant to issues addressed in this article and will not be pursued any further here since this article is concerned with the corporate board accountability to shareholders as the contributors of capital.

As stated above, the Act maintains a primary duty on directors to act in the interest of shareholders as the general duties point to promoting their interest. For example, directors are required under the Act to exercise reasonable care, skill and diligence.[101] In addition to the duty to avoid conflict of interest,[102] the Act also imposes fiduciary duty on company directors in section 178(2). The fiduciary position is in line with the long-established equitable rule that precludes a fiduciary from any engagement with a third party in which they have, or can have, a personal gain without the consent of the principal.[103] It has been argued that 'the rationale for the two strands is that the no-conflict rule is designed to prevent the judgement of the fiduciary from being swayed by

[98] UK CA, secs 171-177.
[99] *Ibid*, 172(1).
[100] Adams (n.11) 1678.
[101] UK CA, sec 174.
[102] *Ibid*, sec 175.
[103] Per David Richards J in *Newgate Stud Co v Penfold* [2008] 1 BCLC 46, 231.

self-interest while the no-profit rule is designed to strip the disloyal fiduciary of gains made in breach of duty.[104]

Compliance with directors' duties in Part 10 of the UK CA is mandatory. The consequence of a breach is encapsulated in following words, '[T]he consequences of breach (or threatened breach) of sections 171-177 are the same as would apply if the corresponding common law rule or equitable principle applied".[105] It is worthy to note that this section of the UK CA treats shareholders as the principal and the corporate board as their agents. Thus, the application of the 'no-conflict' and the 'no-profit' rules is aimed at solving the agency problem created by the separation of ownership from control and thereby protect those interests potentially at risk from directors who may not give their undivided loyalty to the company. Loyalty to the company is for the benefit of shareholders.[106] This is why this article argues that directors' duties under the UK CA is a major aspect of corporate board control. However, other controls are discussed below to illustrate the various ways that the UK corporate legal/regulatory architecture achieves efficiency that has made the system a global gold standard.

3.2 Corporate Disclosure:The Bedrock of Corporate Board Accountability under UK CA and other Ancillary Regulations

As discussed earlier, the purpose of affixing fiduciary responsibility on directors under the Act is to ensure their loyalty. The UK corporate legal/regulatory architecture also includes other ancillary regulations, such as the corporate governance code and listing rules. The Code primarily provides controls and guidelines aiming to enhance corporate reporting and promote corporate accountability. This makes corporate reporting a crucial aspect of the corporate governance structure in driving corporate board accountability in the UK.

Oversight and sundry rights, such as the right to attend meetings and to vote at such meetings[107] are useful controls on corporate boards. Disciplinary powers, including the power to sack a recalcitrant board[108] are also a useful means of steering directors towards behaving responsibly. However, superior knowledge of company operations possessed by directors could be exploited to the disadvantage of the company and the shareholders. For example, the corporate board could

[104] Hannigan, (n.23) 223; See also *Quarter Master UK v Pyke* [2005] 1 BCLC 245, 53-56.
[105] UK CA, 178(1).
[106] UK CA, 172(1).
[107] *Ibid*, secs 281-81; 160.
[108] *Ibid* sec 168.

make the company appear healthy from the outside. Such a façade of the health of the company would make the exercise of shareholders' disciplinary powers unnecessary because the directors would be able to conceal their opportunistic behaviour. This makes disclosure rules and their effective application a sine qua non for the efficiency of a corporate governance regime.

Information on how directors are conducting the company's business is important for the proper exercise of shareholders' rights and powers. This likely informed the extensive disclosure mandated in the UK CA through sundry records and reports that directors are required to present before shareholders.[109] First among the disclosure rules is the requirement that corporate boards keep accounting records.[110] The content of accounting records is set out in section 386(2)(a)-(c). Compliance with section 386 is given further impetus by the provision of penal sanctions of up to two years in prison for failure to keep accounting records as provided in section 386.[111]

Secondly, directors are mandated under the Act to present annual accounts that must give true and fair view of the assets, liabilities, financial position, and profit or loss of the company.[112] The requirement that such accounts be approved by the board of directors[113] is instructive because it forms the basis for liability (a fine) where annual accounts approved fail to comply with the requirements set out in the Act.[114] Issues relating to the preparation of annual accounts are set out in sections 394-414.

Finally, directors are also mandated under the Act to prepare directors' reports.[115] Contents of directors' report are set out in section 416. Unless a company is subject to the small company regime, the directors' report must contain business review,[116] and the contents of the business review are set out in section 416(3)(a) & (b). It is mandatory for directors to sign the report[117] to confirm their commitment to its content. False statement in directors' report attract criminal sanction with a prison term of two

[109] UK CA, secs 380-414. It is noteworthy that members have a right to accounts and reports, sec 431, a right to demand accounts and reports, sec 432, and there is also an obligation for directors to publish accounts and reports on website, sec 430.
[110] UK CA, *Ibid* sec 386.
[111] See sec 387 UK CA for the penal consequences (and the circumstances that may attract the consequences) for failure to comply with sec 386.
[112] *Ibid*, sec 393.
[113] *Ibid*, sec 414(1).
[114] *Ibid*, (5).
[115] Ibid, sec 415.
[116] *Ibid*, sec 417.
[117] *Ibid*, sec 419.

years upon conviction.[118] The controls under the Act are given further impetus by the corporate governance code that stipulates important guidelines aimed at promoting effective corporate reporting. The Code is discussed below.

3.2.1 The Corporate Governance Code 2018

The mission of the Financial Reporting Council (which issued the code) is to promote transparency and integrity in business.[119] The focus of the CGC is on corporate boards as leaders of UK companies.[120] It is instructive that the current Code is the revised and expanded version of the older Code, and its stated aim was to take account of demands in the UK corporate governance network in light of corporate failures.[121] The Code emphasises the value of good corporate governance for long-term sustainable success.[122] Applying the principles and following the provisions and associated guidance are expected to help companies demonstrate throughout their reporting how the guidance of the company contributes to long-term sustainable success.[123] However, this depends on how corporate boards apply the spirit of the principles since the Code is not binding. It is flexible and its application is voluntary through "comply or explain" provisions and supporting structure.

Despite the non-binding character of the code, the connection between the Code and the listing rules (LR) of the London Stock Exchange provides an invaluable statutory backbone, because it is mandatory for premium listed companies in the UK to report on how they have complied with the standards in the code or explain where they have not and the reasons for non-compliance.[124] The code mandates listed companies to explain how they have applied the principles in a manner to enable shareholders to evaluate how the principles have been applied.[125] The importance of this requirement cannot be overemphasized given its connection with disclosure rules in the UK CA provides a reliable source through which shareholders can be informed about how directors are conducting the company's business.

[118] *Ibid*, sec 418.
[119] See the UK CGC 2018.
[120] *Ibid*, introduction 1.
[121] UK CGC, *Ibid*.
[122] *Ibid*.
[123] *Ibid.*
[124] UK LR, rule 9.8.6R(6).
[125] *Ibid*, 2.

4. A Comparative and Critical Analyses of Disclosure Rules Under The Corporate Legal Architecture in Nigeria and The UK

Discussions so far emphasize the primacy of corporate disclosure rules in an effective and efficient corporate governance regime and their implication for corporate success. This is premised on one of the main arguments in this article which is that an inefficient disclosure regime weakens a corporate governance structure because it can be capable of keeping shareholders uninformed and thereby preventing the effective exercise of oversight rights and other shareholder controls granted under the corporate statute. It is argued that a system that allows directors to carry on their duties and obligations without providing adequate means through which those who may be affected by their actions in the management of the business of the company would negate the control and supervisory authority of those concerned (shareholders).

Both the UK and the Nigerian Acts provide that the primary duty of directors is to manage the company in good faith for the success of the company and the benefit of its members.[126] This is the main reason for the grant of oversight and sundry rights to shareholders under the regimes. However, the effectiveness of the oversight and control rights depends to a large extent on how well informed the shareholders are about the state of affairs in the company. This is why corporate statutes in both Nigeria and the UK provide for an extensive disclosure regime with respect to company activities, especially on matters of financial statements (accounts).[127] This is the main window through which shareholders can assess the performance of the board and the company. The absence of such monitoring platform or a weak information regime can provide the opportunity for directors to act in their own self-interest.

The importance of effective governance to corporate success cannot be overemphasized given that collapse of major corporations in the UK has been attributed to corporate governance failure. In fact, the Cadbury committee was established in 1991 to review those aspects of corporate governance that relating to financial reporting and accountability.[128] It is noteworthy that financial reporting formed a major aspect of the Committee's terms of reference.[129] As noted by Brian Cheffins, erosion of confidence in the standard of disclosure was one of the major concerns that prompted the establishment of the Cadbury Committee.[130]

[126] UK CA, sec 172(1); CAMA sec 305(1).
[127] UK CA, secs 380-414; CAMA, secs 374, 378 & 387.
[128] See the formal set of instructions to the Cadbury Committee set out in the Sir A Cadbury *Report of the Committee on the Financial Aspects of Corporate Governance* (London: Gee, 1992).
[129] *Ibid*.
[130] *Ibid*, 395

Therefore, it is not a mere coincidence that the UK did focus on improving its disclosure regime as the major strategy for addressing corporate governance challenges in the country. Brian Cheffins noted that Nigeria, the focus of the present enquiry has experienced issues of corporate scandals and corresponding corporate failures too.[131] A critical analysis of how the two countries have addressed corporate disclosures concerns can reveal the current state of Nigeria's corporate governance architecture. This can form the basis for any suggestion on the improvement needed to bring the local system in Nigeria up-to-date with global standards.

Like the UK, Nigeria's primary legislation on corporate governance is the Companies and Allied Matters Act (CAMA). The corporate governance code complements the Act as an ancillary regulation to guide the corporate boards on compliance with the provisions of the CAMA. Implementation of the Principles of the code depends on the board of directors since its implementation is voluntary under the "comply and explain" rule. This is also the mode of application of the UK corporate governance code as a guide on statutory mandates on compliance with disclosure rules and observance of constraints on corporate boards in the UK CA.

The UK CA and the CAMA assign management of the company to the board of directors.[132] They are required to manage the company for the benefit of members.[133] This is the basis for the corresponding duty of directors to promote the company's success. Directors' duties include general duties and fiduciary duties. Consequences are prescribed in both the UK CA and CAMA for any breach of directors' duties. In addition, both the UK CA and CAMA grant oversight rights and disciplinary powers to shareholders.[134] In both statutes shareholder approval is required for any substantial transaction involving a company's assets subject to the value threshold for such requirement as provided in the act.[135] The importance of shareholder assent to substantial property transaction was captured in the English case of *Stubbins Marketing Ltd v Stubbins Food Partnership Ltd,*[136]where the court emphasized that the assent of shareholders to substantial company's asset mandated under the Act can only be on the basis of informed assent, meaning knowledge of

[131] See (21 & 22).
[132]CAMA, sec 87; UK CA Part IV. See also the cases of *Scott* and the Nigerian case of *Baffa* (n 25 & 39).
[133] CAMA, sec 309; UK CA, sec 172.
[134] CAMA, secs 374-388; UK CA, secs 380-414.
[135] UK CA, secs 197-214. Note that the CAMA has no threshold for shareholder approval for property transactions.
[136] [2020] EWHC 1266.

all the facts material to the decision-making process.[137] This underscores the argument in this article that knowledge of all the facts is required to make informed assent possible. This forms the basis for the main argument in this article, that information is an important component of a corporate governance structure.

In addition to the directors' duties and shareholder approval requirement for substantial transaction involving company's asset, both the CAMA and the UK CA provide extensively for corporate disclosures. Disclosure rules are represented in the Act as accounting records, annual accounts, directors report (required to contain business review). The importance of these disclosure instruments lies in the fact that they are the means through which shareholders can assess corporate board performance. This may explain why the UK CA and CAMA mandate shareholder access to accounting records and other reports[138] as a window to the true state of affairs in the company. It is this knowledge that shareholders require to properly oversee the corporate board and exercise their disciplinary powers if they find the board wanting.

The New Zealand Court of Appeal emphasized the significance of accounting records in the following words: "the obligation to cause accounting records to be "kept" was not merely an obligation to retain and store records but also to create records conforming with the requirements of the section"[139] This raises two important questions the answers to which will be used to assess how much the disclosure regimes in the corporate legal/regulatory architecture address corporate governance concerns in the two jurisdictions because the section referred to in the New Zealand case is *in pari materia* with disclosure obligations in the UK CA[140] and CAMA.[141] First, how do the corporate governance legal architecture and ancillary/complementary rules and guidelines address disclosure? Secondly, what are the consequences for non-compliance with the provisions of disclosure requirements in the corporate legal and ancillary/complementary rules?

Both the Nigerian and the UK corporate legal regimes provide for disclosure on how directors run the affairs of the company through the mandate on directors to keep accounting records that show and explain the transactions of the company, and disclosing with reasonable accuracy, the financial position of the company at any time.[142] Under the

[137] *Ibid*, 366.
[138] UK CA, secs 433-438; CAMA, sec 388.
[139] *R v Bennett* (1985)2 NZCLC 99, 279.
[140] UK CA, secs 396-416
[141] CAMA, *Ibid* 374-388.
[142] CAMA, *Ibid* 374, UK CA, id 386.

two regimes, directors are also required to prepare annual accounts (financial statements).[143] It is instructive that the accounting records are the basis for preparing annual accounts (financial statements) because the financial statement that directors are required to present before the company in general meeting.[144] The right granted shareholders to obtain copies of financial statements in sections 387 CAMA and 431 UK CA shows that their purpose is to inform shareholders about how directors have managed the company's operations for the year. This can be inferred from prescribed contents of annual accounts which include a present and current account position and accounting policy as it appears in the company's balance sheet; profit and loss accounts; notes on accounts; the auditors' report; director's report; statement of the source and application of fund or statement of cash flow; changes in equity etc.[145] The requirement that annual accounts must comply with the comprehensive format for preparing such accounts as laid down in both the UK CA and CAMA underscores the place of accounts and records as a medium for informing shareholders about the directors' activities and the state of affairs in the company for the period under review.

In addition to the annual accounts, directors are also required to prepare "Directors' Report" for each year, which must contain a fair view of the development of the business of the company and its subsidiaries during the year.[146] Directors' report must, among other things, report on the financial activities of the company during the year. It must also report any significant change in those activities during the year. The major aim of directors' report is to buttress the annual accounts with a report on development of the business of the company among other requirements. Details of directors' activities and operations of the company can only be made available to shareholders through annual accounts and directors' report. Therefore, they form the basis for informing shareholders about a company's state of affairs under the two regimes.

The primacy of disclosure for shareholder information on activities of directors and operation of business makes efficient disclosure system important to shareholders and investors.[147] The UK system recognizes

[143] CAMA, *Ibid* 377; UK CA, ibid 393.
[144] CAMA, *Ibid* 388; UK CA, ibid 437.
[145] CAMA, sec 377(2), see also UK CA, sec 396.
[146] CAMA, sec 385(1)(a) UK CA. sec 415.
[147] KCW Chen, Z Chen and KCJ Wei, 'Legal Protection of Investors, Corporate Governance, and the Cost of Equity Capital' *Journal of Corporate Finance* [2009] 15 273, 286; L Bebchuk and MS Weisbach, 'The State of Corporate Governance Research' (2009) National Bureau of Economic Research Working Paper No 15537, 18, 21 available at: http://www.nber.org/
papers/w15537. Last accessed 18 September 2025.

the importance of information to shareholders in this regard as current efforts to enhance disclosure philosophy in the UK CA do show. Since enacting the UK CA in 2006, several additions/amendments have been made to disclosure requirements under the Act to improve the quality of information for shareholders/investors. To further simplify information that shareholders receive from directors, the UK introduced the Business Review (BR) which took effect from 6 April 2008 through section 417 of the Act. The main aim of introducing the BR was to address the key role of shareholders in driving long-term company performance and economic prosperity because the UK government believed that informed shareholders or those acting on their behalf are the proper constituents to drive corporate board accountability.[148]

Further improvements to shareholder information were introduced with the new chapter 4A Strategic Report (SR) that became operational in October 2013 to replace the BR. It incorporates the provisions of the BR, and also requires directors of all companies to prepare strategic report for each financial year.[149] It is arguable that the new 414C(2) aims to empower small investor and those regarded as corporate 'outsiders.[150] This can be inferred from the Guidance on Strategic Report, which states that it is a means to encourage companies to draft their annual reports and present narrative information in a way that allows them to 'tell their' story to investors concisely.[151]

In the case of Nigeria, despite enacting its corporate legal regime seven years after the introduction of 414C(2) and operating the same corporate governance system that depends on shareholder intervention, there was no attempt in the new Act to simplify the information that directors present to shareholders. Ernst and Young noted, in their interrogation of the Greenbury Committee Report that the volume of information available under a company's financial statements and directors' reports can become a 'barrier to effective communication'.[152] The report further states that shortcomings in disclosure system can result in poor decisions that may in extreme cases lead to corporate failure. [153] In the case of

[148] Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) SI 2007/2194, art 6 and sched 1, para 16.
[149]The Companies Act 2006 (Strategic Report and Directors' Report) Regulation 2013, SI 2013/1970.
[150] See Andrew Keay observation regarding sec 417 (which is now contained in section 414C(2) with respect to the new SR. Andrew Keay, The Enlightened Shareholder value Principle and Corporate Governance (Routledge, 2014) 177.
[151] Birds *et al*, (n.38) 504-05.
[152]C Villiers, *Corporate Reporting and Company Law* (Cambridge University Press 2006) 4, citing Corporate Governance: Greenbury Implementation (1996, Ernst & Young), paras 2.2 and 6.
[153] Corporate Governance, *Ibid* paras 2.2 and 6-7.

Nigeria, it is arguable that the current state of disclosure rules under the CAMA regarding the volume of information provided in section 374-388 of the Act, can impair the quality of information available to shareholders of a Nigerian company. This is a major challenge in the Nigerian corporate environment. This is one of the reasons that this article argues that Nigeria should follow the UK example by improving the disclosure regime to enhance information flow to investors/shareholders.

Another major challenge with corporate reporting in the Nigerian system is that the NCCG, which was issued to guide directors in the exercise of their powers to faithfully discharge their obligations under CAMA is merely a guide without any statutory mandate to secure compliance. On the contrary, the UK Code mandates effective corporate reporting to shareholders by connecting reporting under the Code to disclosure rules in the corporate legal regime (UK CA). Notably, it states that '[c]orporate governance reporting is required to relate coherently to other parts of the annual report – particularly the Strategic Report and other complementary information – so that shareholders can effectively assess the quality of the company's governance arrangements and the boards activities and contributions'.[154]

The UK Code is a guide, and its adoption is not mandatory. However, unlike the Nigerian Code which is a stand-alone instrument, the UK Code is connected to the listing rules of the London Stock Exchange. As stated earlier, it is mandatory for premium listed companies in the UK to report on how they have complied with the standards in the code or explain where they have not and the reasons for non-compliance.[155] This no doubt, provides the UK Code some statutory underpinning that can help secure compliance with disclosure requirements in the Act and the Code itself. The linking of the Code to listing rules and the implications for effective corporate governance cannot be overemphasized. The knowledge of corporate board activities and operations of the company's business which can be derived from accounts and reports can provide an avenue for shareholders to voice their opinions, and can play a major role in improving compliance.[156]

Another factor that may help secure compliance with disclosure rules is the gravity of the punishment that may result from non-compliance. For example, the UK CA provides for criminal sanctions for non-compliance with the requirement to keep accounting records as required by section

[154] UK Code, Introduction (Reporting on the Code) at 3.
[155] UK LR, rule 9.8.6R(6).
[156] Sharma and Sachdeva (n.28) 419.

386.[157] The Act also provides for criminal sanctions for presentation of false statements in directors' report. The presentation of such a false statement attracts two years prison term upon conviction.[158] This shows a clear intention to steer corporate boards towards compliance with disclosure rules. Non-compliance with sections 374 and 375 concerning accounting records and financial statements is also an offence under the CAMA.[159] The Act provides that failure to comply with the requirements regarding matters to be stated and particulars to be given in directors' report is an offence.[160]

However, unlike the UK CA that prescribes penal sanction, failure to comply with requirements to keep accurate accounting records or comply with the requirements concerning matters to be stated in directors' report under the CAMA attracts only such penalty as the Commission (Corporate Affairs Commission) would specify in its regulation.[161] The problem with this is that at the time the current CAMA was enacted there were no regulations addressing non-compliance with corporate reporting. The current Companies Regulation 2021[162] which was issued after the enactment of the current CAMA in 2020 does not specify any penalty concerning non-compliance with disclosure rules. In fact, there is no mention of corporate reporting in the current regulation.

This is one of the reasons this article argues that compliance with disclosure requirements mandated in the CAMA cannot be guaranteed. It is further argued that this is a major deficiency given the importance of accounts and records as the primary means through which shareholders obtain information from corporate managers. It is submitted that criminal sanctions will be more likely to engender compliance. Any other form of punishment, such as fines would be unlikely to deter directors who may have benefitted from the abuse. The fact that such directors might be in possession of the proceeds from the abuse could make it convenient for them to offset whatever fine levied against them. As such, in addition to simplifying the disclosure regime, criminal sanctions are also recommended to steer directors towards compliance with disclosure rules.

[157] See sec 387 UK CA for penal consequences for failure to comply with any provisions of sec 386, which includes two years prison term upon conviction.
[158] *Ibid*, 416.
[159] *Ibid*, 376.
[160] CAMA, sec 385(6).
[161] *Ibid*, 376(3).
[162] Regulations made under companies and Allied Matters Act 2020.

5. **Conclusion**

Corporate failure has become a common feature of the global economic system. Corporate governance failure has been blamed for most corporate disasters. As a result, there has been general improvements in corporate governance systems. Most of the improvements have been in corporate disclosure rules. This underscores the fundamentality of disclosure rules in corporate governance. Nigeria is not immune to corporate failures. The country has also embarked on corporate law reforms by enacting the new CAMA (2020) and issuing a governance code in 2018 with a view to promoting economic growth.

The investigation of Nigeria's corporate governance regime in this article was with particular focus on the disclosure regime. This investigation identified several gaps in the disclosure regime that could be exploited by corporate managers to undermine the integrity of the business. To address the identified gaps, it is suggested that Nigeria should follow the UK example in improving the country's disclosure regime. In this regard, improvement is recommended for both the CAMA and the NCCG. With respect to the CAMA, improvement to the corporate disclosure rules is recommended, especially regarding the shareholder information process. This would create better access for shareholders to obtain quality information that could enhance the exercise of oversight rights.

The transcendental value of disclosure rules as the means through which shareholders obtain the information they need to ensure effective corporate governance cannot be over emphasised. This makes compliance with disclosure rules a necessity. To ensure compliance with disclosure rules in Nigeria's corporate governance system, it is necessary to borrow from the UK model by legislating criminal sanctions for non-compliance with disclosure requirements under the CAMA. In addition, linking the NCCG to statutory enactment is also suggested to give statutory spine to the guidelines in the NCCG. This may ultimately improve compliance with disclosure rules in the Nigerian corporate environment.