THE EFFICACY OF MANDATORY CORPORATE GOVERNANCE REGULATION IN AN EMERGING MARKET: LESSONS FROM NIGERIA

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Doctor of Philosophy

ASTON UNIVERSITY

June 2021

Thesis Summary

This thesis examines the application of mandatory corporate governance regulation in Nigeria, following the introduction of multiple corporate governance reforms in this jurisdiction. With the aid of corporate governance theories and the theory of responsive regulation, this thesis analyses how regulators in this emerging market have attempted to escalate to the mandatory observance of corporate governance principles. This analysis details the factors that have enabled and frustrated the practical application of the regulators' responsive approaches, and recommends improvements to regulatory practice in this field.

The socio-legal methodology was used to facilitate this study's objectives of analysing the reforms within their context, and examining their practical implications. Qualitative data was collected through semi-structured interviews with qualified company executives and regulators in Nigeria. Due to the COVID-19 pandemic and the resulting health regulations, the interviews were conducted by way of video conferencing and telephone.

Following the analysis of the interview data through NVivo 12 software, this study concludes that the escalation to mandatory corporate governance regulation has resulted in improvements to compliance rates and governance standards in this emerging market. However, the substance of these improvements has been constrained by inadequate regulatory capacity and the existence of multiple regulators of corporate governance.

This thesis contributes to the body of research on corporate governance in emerging markets as well as the theory of responsive regulation, by testing the core principles of this theory within the context of mandatory corporate governance regulation in Nigeria. In addition, this thesis demonstrates how socio-legal research can be conducted remotely in the wake of the COVID-19 pandemic. This thesis also outlines how responsive corporate governance regulation may be successfully applied in emerging markets with similar needs and characteristics to Nigeria.

Key words: corporate governance, responsive regulation, emerging markets, socio-legal research, qualitative interviews.

Acknowledgements

This thesis was made possible by the guidance and incredible support of my supervisors, Dr Daniel Cash and Robert Goddard. Thank you for comments, revisions, mini therapy sessions, and unwavering belief in my abilities. I would also like to thank my progression reviewers, Dr Kristie Thomas, Professor Simon Cooper and Dr Matthew Carter for their insightful comments and suggestions. In addition, I must thank everyone at the Aston Business School and Law School for their support, and the provision of the funding and training grants that made this entire endeavour possible.

Further thanks go to everyone within the Aston Graduate School, Alison Birch, and the Postgraduate Research support team led by Farat Ara. Thank you all for the comprehensive administrative support and training sessions that aided my progression through each stage of this programme. My thanks also go to my colleagues, particularly the 11th floor squad and the APRS family, who made the doctoral journey much less lonely than feared.

I owe a debt of gratitude to the company representatives and regulators who generously agreed to participate in this study, in spite of the disruption caused by the COVID-19 pandemic. Thank you for contributing your expertise to this project, and for entrusting me with your honest opinions.

Finally, to my family, Niyi, Boye, Tosin, Seun, Lola, Ntombi and Tux, there are not enough words to thank you for your unconditional love and support. This is for you.

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1. Introduction

This chapter aims to introduce the research topic, and justify the focus of this research project on the introduction of mandatory corporate governance regulation in Nigeria. In doing so, this chapter briefly outlines the Nigeria-specific background and the broader emerging-markets context of this research in section 1.1, and thereafter justifies this focus in section 1.2. Section 1.3 builds on the preceding sections by identifying the project's objectives and research questions, and section 1.4 outlines the methodology utilised in the conduct of these enquiries. Section 1.5 provides a summary of the outcomes and contributions of this thesis, and section 1.6 establishes the structure of the thesis, along with a brief synopsis of the contents of the succeeding chapters.

1.1. Background

On May 12, 2014, Nigeria's Securities and Exchange Commission (SEC), the capital market regulator and primary corporate governance regulator for public companies, issued a regulation which amended the 2011 Code of Corporate Governance for Public Companies.[1] Whereas the 2011 code was founded upon a 'comply or explain' philosophy, by this regulation and the accompanying amendment, compliance with the Code's provisions became mandatory, and all optional language in the code were replaced with mandatory language. The SEC also prescribed fines for non-compliance, in addition to other sanctions as may be imposed at its discretion. According to the SEC, this amendment was issued 'with the view therefore, to further strengthen corporate governance in Nigeria.'[2] This development constitutes the essential basis for this research project, and is reducible to one primary question: can escalation to mandatory corporate governance regulation improve corporate governance standards in the context of an emerging market?

[1] SEC, 'Code of Corporate Governance for Public Companies' <https://bit.ly/2XKarxs> accessed 28 December 2018; Yilji Dimka and Bukola Iji, 'Complying with amended corporate governance code' (2014) ILO <https://bit.ly/2CQsPZ8 > accessed 23 January 2020.
[2] ibid.

The literature on corporate governance regulation is largely situated within the context of developed countries and economic powerhouses.[3] Nonetheless, a sizeable portion of the literature is devoted to the experience of emerging markets, highlighting how and why regulation in these countries ought to differ in philosophy, complexity, and robustness from that of their more established counterparts.[4] This is because governance mechanisms in these countries tend to be soft-law oriented and influenced by international models along economic ties, membership of international organisations, and foreign investment activities.[5]

These mechanisms are said to be beset by institutional challenges in these emerging markets which frustrate good corporate governance practices, not least: small capital markets; concentrated ownership in the elite; inadequate disclosure and transparency; corruption; political interference; and weak legal institutions.[6] Some of the emerging markets identified as experiencing these challenges include Brazil, Chile, Indonesia, Iran, Kenya, Malaysia, Nigeria, Pakistan, South Africa, and Vietnam.[7] Consequently, there is a burgeoning debate in the discourse about optimal regulation in these markets, with resultant proposals often recommending a deviation from soft-law, principles-based regulation towards varying levels of mandatory or rules-based regulation.

In the case of Nigeria, the corporate governance experience has been marked by several corporate scandals and regulatory responses, such that there are multiple regulatory regimes. These regimes have been periodically reformed and administered by different regulators in an attempt to mitigate the challenges experienced.[8] It is within this context that the Nigerian SEC's amendment, referred to above, gains its significance. The literature, with respect to emerging markets, developed from identifying and

[3] Emmanuel Adegbite, 'Corporate governance regulation in Nigeria.' (2012) 12 Corporate Governance: The International Journal of Business in Society 257.
[4] ibid; Franklin Nakpodia and others, 'Neither principles nor rules: Making corporate governance work in Sub-Saharan Africa' (2016) 151 Journal of Business Ethics 3.
[5] ibid.
[6] ibid.
[7] Leora Klapper and Inessa Love, 'Corporate governance, investor protection and performance in emerging markets' (2004) 10 Journal of Corporate Finance 708; Samanta Navajyoti 'The impact of adopting shareholder primacy corporate governance on the growth of the financial market in developing countries' (2015) University of Sheffield 74 < https://bit.ly/2CVce6q> accessed 26 January 2019.
[8] Nakpodia (n 4); Adegbite (n 3).

exploring the unique difficulties which frustrate good corporate governance, to proposing reforms which involve varying degrees of regulatory escalation. The escalation of the SEC's code from a semi-voluntary 'comply or explain' regulatory basis to a wholly mandatory regime, therefore presents the opportunity to contribute to the collective understanding of corporate governance within this context by exploring the efficacy of a mandatory regime in Nigeria, with lessons to be learnt about the broader efficacy of this strategy in emerging markets with similar characteristics.

1.2. Justification

In providing the justification for the selection of Nigeria for this case study, it is first necessary to provide key information about Nigeria. Nigeria is recognised as a middle-income emerging market, with its economy built upon a dominant oil and gas sector, as well as growing manufacturing, technology and communications, financial services, and entertainment sectors.[9] According to the International Monetary Fund (IMF), it is ranked as the largest economy in Africa, and the 27th largest economy in the world in terms of nominal Gross Domestic Product (GDP).[10] As a result of these factors, Nigeria features prominently in the discourse concerning emerging markets. Alongside Mexico, Indonesia and Turkey, Nigeria is one of the four 'MINT' emerging markets that the economist Jim O'Neill argues have positive economic prospects because they possess 'very favourable demographics for at least the next 20 years.'[11] Nigeria is also one of 11 countries selected as the biggest 'Global Growth Generators' by economic analysts, which is an appellation reserved for countries with the greatest amount of growth potential over the next four decades.[12] Further, with a population of over 200 million people, which represents about half of West Africa's total population, Nigeria is a key regional player, and possesses the largest market for goods and services in Africa.[13]

[9] Ibp Usa, *Nigeria: Doing Business and Investing in Nigeria Guide* (2nd edn, International Business Publications, 2019) 33.
[10] International Monetary Fund, 'World Economic Outlook Database, October 2019' < https://bit.ly/36WlnbU> accessed 3 September 2019.
[11] Jim O'Neill, 'Who are you calling a BRIC?' *Bloomberg* (1 November 2013).
[12] Willem Buiter and Ebrahim Rahbari, 'Global Growth Generators: Moving beyond emerging markets and BRICS' (2011) 55 Centre for Economic Policy Research 5.
[13] World Bank, 'Nigeria Overview' <https://www.worldbank.org/en/country/nigeria/overview#1> accessed 23 January 2020.

The combination of the foregoing factors has developed Nigeria into an attractive destination for investment activity, as investors seek to harness the expected growth potential and the resulting opportunities for profit. For instance, in 2019, the cumulative volume of Foreign Portfolio Investment (FPI) into Nigeria exceeded 2.5 billion United States Dollars (USD), while Foreign Direct Investment (FDI) inflows for the year stood at 2 billion USD.[14] This ability to attract foreign investment is crucial for Nigeria's economic development, not least because foreign capital account for over 50% of the total trading volume on Nigeria's stock exchange, and foreign investments underpin the oil and gas sector upon which Nigeria's economy is heavily reliant.[15]

As a result of these facts, and the need to maintain Nigeria's attractiveness for investment activity, the existence of strong investor protections and robust financial markets is a priority for policymakers and stakeholders in Nigeria. This is evidenced by the spate of legal and structural reforms introduced over the past decade, that have enabled the country's rise from 170 to 131 on the World Bank's Doing Business report, an index which measures the ease of doing business in various jurisdictions.[16] One key area of focus in these reforms has been corporate governance regulation, which the Nigerian Minister for Trade and Investment described in 2019 as being an essential component of the country's strategy to attract and retain foreign investment.[17] This link between corporate governance and investment is supported by Khanna and Zyla's research, which found that investors in emerging markets avoid investing in jurisdictions with poor governance systems, and will readily pay premiums on investments in firms with solid corporate governance practices.[18]

[14] The Nigerian Stock Exchange, 'Foreign Portfolio Investment Report: NSE Domestic and FPI Report December 2019' <https://bit.ly/2SlGRcY> accessed 23 January 2020; United Nations Conference on Trade and Development (UNCTAD), *World Investment Report 2019: Special Economic Zones* (United Nations Publications, 2019) 37.
[15] ibid.
[16] The World Bank, *Doing Business 2020* (World Bank Publications, 2019).
[17] 'Nigeria's Code of Governance: 2019 Opening Remarks By Okey Enalamah', *Proshare* Nigeria (Lagos, 27 March 2019) < https://bit.ly/2tE3G3t> accessed 29 January 2020.
[18] Vikramaditya Khanna and Roman Zyla, 'Survey says: corporate governance matters to investors in emerging market companies' (2017) World Bank Working Paper 114591 < https://bit.ly/3bj3Fmv> accessed 2 February 2020.

On this basis, Nigeria has embarked on several corporate governance reforms since 2003, and as of February 2020, there were six operative codes of corporate governance in Nigeria which apply to publicly listed companies and companies in certain sectors, with each code administered by a distinct regulator.[19] They are: the Securities and Exchange Commission's Code of Corporate Governance for Public Companies 2014 (SEC Code); the Central Bank of Nigeria's Code of Corporate Governance for Banks and Discount Houses, and the Guidelines for Whistle-Blowing 2014 (CBN Code); the Nigerian Communications Commission's Code of Corporate Governance for the Telecommunications Industry 2014 (NCC Code); the National Insurance Commission's Code of Good Corporate Governance for the Insurance Industry 2009 (NAICOM Code); the Pension Commission's Code of Corporate Governance for Licensed Pension Operators 2008 (PENCOM Code); and, the Nigeria Code of Corporate Governance 2018 (NCCG Code), which was published in January 2019. [20]

Nigeria's corporate governance regulation is evidently prolific, and appears to be a work in progress in view of recent reforms. These reforms have in turn attracted substantial academic interest and have generated a body of research output on corporate governance in Nigeria, amongst other emerging markets.[21] Against this backdrop, this thesis examines the efficacy of the most recent reforms to corporate governance in Nigeria, specifically the adoption of a mandatory philosophy in the SEC Code in 2014 amongst other developments outlined in Chapter 2. Nigeria's status as a prominent emerging market, its prolific corporate governance reforms, the academic interest in corporate governance in emerging markets, and the importance of robust corporate governance systems to the economic growth and investment activity in emerging markets, collectively mean that this case study on Nigeria offers a

[19] Olayimika Phillips, Michael Amadi and Theresa Emeifeogwu, 'Nigeria' in Willem J Calkoen (eds), *The Corporate Governance Review* (7th edn, The Law Review, 2019).
[20] ibid.
[21] Elewechi Okike, 'Corporate governance in Nigeria: The status quo' (2007) 15 Corporate Governance: An International Review 173; Adegbite (n 3); Emmanuel Adegbite and Chizu Nakajima, 'Institutions and institutional maintenance: implications for understanding and theorizing corporate governance in developing economies' (2012) 42 International Studies of Management and Organization 69; Elewechi Okike and Emmanuel Adegbite, 'The code of corporate governance in Nigeria: Efficiency gains or social legitimation?' (2012) 95 Corporate Ownership and Control 262; Nakpodia (n 4); Louis Osemeke and Emmanuel Adegbite, 'Regulatory multiplicity and conflict: Towards a combined code on corporate governance in Nigeria' (2016) 133 Journal of Business Ethics 431.

useful opportunity to examine how emerging markets evolve their corporate governance regulation to suit their particular needs and objectives.

The Nigeria-specific factors highlighted above, also indicate that this country offers a basis for the contemporary consideration and application of corporate governance regulatory theories in the context of an emerging market. Further, the understanding of the efficacy of reforms in Nigeria not only provides valuable insight for Nigerian stakeholders, but the knowledge of which strategies have succeeded and failed in this leading emerging market is also likely to prove instrumental for academics, policy makers, development finance institutions, and other stakeholders concerned with the economic development of other emerging markets with similar characteristics to Nigeria.

1.3. Research Aim and Questions

As explained in the preceding sections, the aim of this research project is to examine the efficacy of recent corporate governance reforms in Nigeria, using empirical evidence. In 2014, the SEC's Code of Corporate Governance for Public Companies became mandatory, with the threat of the imposition of fines for those public companies found to be non-compliant.[22] The SEC at the time stated that this change was required in order to strengthen the state of corporate governance. Subsequently, in 2019, a different regulator, the Financial Reporting Council of Nigeria (FRCN), published a new code of corporate governance, the Nigerian Code of Corporate Governance 2018 (NCCG), on an 'apply and explain' or semi-voluntary basis, although an earlier version of the code strictly required mandatory compliance like the SEC's code.[23] The NCCG upon its introduction did not supersede the pre-existing codes of corporate governance, and as a result, it became the sixth operative code for public companies.

By interviewing key corporate governance stakeholders in Nigeria, including company executives and officials of the SEC and the FRCN, this thesis seeks to understand how the above reforms have affected

[22] SEC (n 1).
[23] Financial Reporting Council of Nigeria, 'Nigerian Code of Corporate Governance 2018' (2018) iv <https://bit.ly/2uqqKCY> accessed 16 June 2018.

the operation of corporate governance in Nigeria. In both reform cases, the regulators identified a malaise in the governance system, and developed regulations to address the deficiencies. In the case of the SEC, mandatory regulation was the chosen strategy. The FRCN started out on the same strategy, however, it decided to adopt a semi-voluntary approach instead. The fact that these two recent reforms either applied or considered applying mandatory regulation, necessitates an enquiry into the efficacy of this regulatory strategy as a solution to the perceived governance challenges in this jurisdiction. Consequently, the primary question of this thesis is:

Can escalation to mandatory corporate governance regulation improve corporate governance standards in the context of an emerging market?

The construction of this research question focuses on the practicalities of corporate regulation, and the real impact of regulation on the regulated. The empirical evidence obtained therefore seeks to fulfil this research objective by asking whether the application and consideration of this strategy in recent reforms has improved governance standards, and whether these changes have cumulatively improved the governance behaviour of the regulated companies. As further outlined in Chapter 2, corporate governance faces a number of significant challenges in emerging markets like Nigeria. An additional line of enquiry is therefore about the impact of such challenges on the effectiveness of mandatory regulation in this environment.

By focusing on the practical application of corporate governance regulation, this research also operates on the notion that understanding what works, and what does not work, is a crucial element of effective regulatory policy making. Consequently, the research questions and empirical evidence are examined through the lens of responsive regulatory theory, a theory which at its core argues that regulators ought to monitor the compliance behaviour of the regulated, and adapt their strategies accordingly. This theory is discussed in greater detail in the third chapter of this thesis.

1.4. Summary of Methodology

This research project makes use of the socio-legal methodology and the qualitative interview method, as it addresses the research questions outlined in the preceding section. As detailed in Chapter 4, this methodology was selected because it facilitates the examination of the gap between the text and intendment of laws and regulations, and their practical application, and helps to answer questions about how these laws and regulations work in practice. This methodology also ensures that the perspectives of those most involved in the subject of the study are acknowledged in the process of answering the research questions.

In this thesis, this approach involved the use of semi-structured interviews to collect data from the participants, comprising of company executives and regulatory officials. Although the research design envisaged face-to-face interviews, the COVID-19 pandemic and the resulting health regulations meant that such fieldwork became unfeasible, and as a result the interviews were conducted by way of video conferencing and telephone. The interviews were transcribed and uploaded into NVivo 12, a software programme that aids qualitative data analysis.

1.5. Thesis Outcomes

This thesis contributes to the literature by examining the efficacy of mandatory corporate governance regulation in Nigeria. The findings confirm that the use of this escalatory strategy, wherein regulatees are required to comply with corporate governance provisions under the threat of sanctions, can yield positive results. However, the substance of these results are reliant on the extent to which the challenges identified in the literature are mitigated.

The challenges of resource constraints, polycentric regulation, and regulatory relationships were identified as factors that frustrate the effective application of responsive or mandatory regulation. In the case of emerging markets, particularly those where regulators operate in low-trust environments with weak legal institutions, the task of effectively applying responsive regulation becomes more

cumbersome. This thesis addresses this through recommendations aimed at the workability of responsive regulation in such environments, and introduces a new level of 'light-touch escalation' to responsive regulation's pyramid of regulation to this effect.

This thesis also possesses practical implications for regulators, companies, and stakeholders regarding the structure and implementation of corporate governance regulation. It suggests how regulation could be simplified through harmonisation and the adoption of a single coherent philosophy. With reference to the contributions of company representatives and regulators, this thesis further illustrates why reforms intended to harmonise corporate governance in Nigeria are unlikely to achieve the desired results, not least because the regulators differ in their perception of the appropriate mode of regulation.

In addition, this thesis highlights why escalatory regulation is required in Nigeria, particularly with regards to key corporate governance principles such as the presence of independent directors, as evidence from the interviews suggest that some companies would ignore such provisions if given the freedom to do so.

This thesis also highlights the contribution of the socio-legal methodology to policy-based research, particularly within the context of the COVID-19 pandemic and the resulting disruptions to everyday practice. The process of data collection and analysis outlined in Chapter 4 demonstrates that this methodology remains relevant where physical fieldwork is unfeasible, and shares knowledge about how to recruit participants, and collect data in such circumstances.

Finally, this thesis contributes to the literature on corporate governance regulation in emerging markets, by highlighting how the findings herein are of relevance to jurisdictions with similar characteristics to Nigeria. While the Nigerian experience shows that the application responsive regulation in this form can produce positive results, such an escalatory strategy requires well-resourced regulators, imbued with the right capacity and expertise to effectively respond to shifting attitudes of regulatees. It is also

necessary to eliminate sources of polycentric regulation, and encourage strong relationships between the regulators and regulated through regular consultations.

1.6. Thesis Structure

The structure of this thesis is as follows: This first chapter introduces the research project, its objectives, methodology and structure. The second chapter provides the detailed context of the development and evolution of corporate governance regulation in Nigeria, and outlines the nature of corporate governance and its challenges in this country. The third chapter contextualises this research project within the body of literature of corporate governance and regulation. This involves a consideration of key corporate governance theories, dominant regulatory approaches in corporate governance regulation, and the core regulatory theory of responsive regulation. The fourth chapter describes and justifies the design and methodology selected for this research project. This chapter also explains how critical issues such as the COVID-19 pandemic, ethical considerations, the challenges of access and transcription, and the limitations of sample size and reliability were accounted for in this project.

The fifth chapter presents the empirical findings from the data collection process, extracts the key themes and findings from the conversations with the corporate governance experts, and examines their implications for the success of responsive corporate governance regulation in Nigeria. The sixth and final chapter summarises the findings of the thesis, highlights the implications and relevance of these findings, and details the limitations of this research project, as well as considerations for future research in this field.

2. Corporate Governance Regulation in Nigeria

This chapter begins with an overview of the development and evolution of corporate governance regulation in Nigeria. This overview is followed by a consideration of the regulatory framework and literature on corporate governance regulation in Nigeria, in order to explain how this research project is situated within the field of corporate governance, while also emphasising existing gap in knowledge, and the contributions this thesis makes to the body of corporate governance literature.

2.1. Development of Corporate Governance in Nigeria

The embodiment of corporate governance is often rooted in a country's company law. Like many other former British colonies, the development and evolution of company law and corporate governance in Nigeria is intrinsically linked to the country's colonial history. This is because during colonial rule, the existing company law was the Companies Ordinance of 1922, a version of the U.K.'s Companies Act 1908, which was applied by the British colonial government to govern corporate activity in Nigeria. Upon independence, Nigeria inherited this legal regime, which applied until 1968 when Nigeria introduced its own Companies Act. However, the 1968 Companies Act was in was in reality a mirror of the United Kingdom's Companies Act of 1948.[24] Therefore, as a result of its history, the provisions relating to the governance and operations of companies in Nigeria today were historically adapted from British precedents.[25]

This was probably because the vast majority of companies at this time were British-owned, often controlled by parent companies in the U.K. and, as a result, the adoption of U.K. legislation that companies were familiar with was a natural progression.[26] Perhaps another explanation is that the independent law-making capacity of Nigeria was still in its infancy, hampered by lack of prior

[24] Elewechi Okike, 'Corporate Governance in Nigeria: the status quo' (2007) 15(2) Corporate Governance: An International Review 174.
[25] ibid.
[26] ibid.

experience. Consequently, it might be that it was easier and more expedient to rely on the U.K.'s legal system.

Therefore, Nigeria's company legislation, which underpins corporate governance, was largely inspired by corresponding legislation in the UK. This means that many of the corporate principles which underpin the U.K.'s company laws are in existence in Nigeria as well. For example: the principle of shareholder primacy which prioritises the interest of shareholders; the creation of fiduciary duties and accountability to ensure management are accountable to shareholders; and the existence of a capital market which allows shareholders to determine the value of companies.[27] One consequence of this adoption is that Nigeria has entrenched company law that was not designed to meet its peculiar sociocultural context. As will be discussed in the sections to follow, this absence of a natural evolution of laws has been argued to be a contributory factor to the challenges experienced in this country's legal framework.

2.2. Regulatory Framework

The efficiency of a jurisdiction's corporate governance regulatory framework is essential for the development of good corporate governance practices within that jurisdiction. This is because the combination of the laws, rules, and processes and systems within the framework help to drive up standards by monitoring compliance by companies, and by providing a set of incentives, safeguards, and punishments to boost the standard of corporate governance.[28] Therefore, because the health of country's corporate governance system is largely dependent on the underlying regulatory framework, it is necessary to outline and evaluate the framework for corporate governance in Nigeria. Nigeria's regulatory framework is comprised of a number of legislations, listing rules, and codes of corporate governance administered by regulatory bodies, all of which provide the external influence on corporate behaviour within this jurisdiction, as considered below.

[27] ibid.
[28] Benjamin Inyang, 'Corporate Governance Regulatory Framework in Nigeria: The Offerings and Challenges' in Nicholas Capaldi and others (eds), *Dimensional Corporate Governance. CSR, Sustainability, Ethics & Governance* (Springer 2017) 67.

2.2.1. Regulatory Bodies

The main regulatory bodies identified for the purpose of this research project are the Corporate Affairs Commission, the Securities and Exchange Commission, the Nigerian Stock Exchange, the Central Bank of Nigeria, and the Financial Reporting Council of Nigeria. Their respective authorities and the roles each of these bodies play within the regulatory framework are discussed within this subsection, while other regulatory bodies such as the National Insurance Commission, the Pension Commission and the National Communication Commission are discussed within the context of their codes of corporate governance in subsection 2.2.2.

2.2.1.1. Corporate Affairs Commission

The Corporate Affairs Commission (CAC), which was established by Section 1 of the Companies and Allied Matters Act (CAMA) 1990, and re-established by the 2020 re-enactment of the same Act, is the regulatory body responsible for overseeing the incorporation, management, and winding up of companies. The CAC is also responsible for the administration of the CAMA and, in this capacity, it receives the annual returns of companies, monitors compliance with the Act's provisions, and imposes the specified statutory penalties where non-compliance is observed.[29] In addition, the CAC possesses the specific power to conduct investigations into the affairs of companies in the interests of their shareholders as well as the general public.[30] Therefore, the operations of this regulatory body significantly influence the robustness of the corporate governance framework in this jurisdiction.

The World Bank and the IMF's Reports on the Observation of Codes (ROSC) are particularly instructive on the effectiveness of the CAC. The ROSCs provide a summary of the degree to which countries comply with international standards and codes, with the aim of enhancing both domestic and international financial stability.[31] When reviewing the CAC's discharge of its statutory duties, the 2004 ROSC Country Report for Nigeria found that the CAC lacked the capacity to regulate the compliance

[29] Companies and Allied Matters Act 2020, s 8.
[30] ibid.
[31] The World Bank, 'Reports on the Observance of Standards and Codes' < https://bit.ly/2T6fc1n> accessed 21 February 2020.

of companies with the financial reporting requirements of the companies legislation.[32] This meant that financial statements and annual returns of companies were not readily available for inspection, and companies which failed to comply with the filing requirements were not sanctioned.[33] The 2004 report concluded that the CAC had weak enforcement mechanisms, which were exacerbated by corruption and inadequate record keeping within the body.[34]

The 2011 ROSC Country Report for Nigeria again found that companies failed to file their annual returns with the CAC within the statutory deadline, and were not effectively sanctioned.[35] This report also found that a significant proportion of the 869,000 companies on the CAC's register were dormant, and could not be delisted.[36] In addition, the CAC was found to prepare documents manually, and the resulting lack of electronic documents prevented the timely provision of statutory reports and financial statements of companies to other parties.[37] The 2011 report therefore concluded that the CAC still failed to effectively discharge its statutory duties.[38]

The ROSC reports make for grim reading, particularly in light of the CAC's crucial role in the supervision of companies. Although a number of reforms have been introduced since 2011, not least the digitalisation of the CAC's records and services,[39] it is evident that its monitoring and enforcement capacities have to be strengthened in order to promulgate good corporate governance practices in Nigeria.

[32] World Bank, 'Nigeria - Report on the observance of standards and codes (ROSC)' (2004) <https://bit.ly/2ucvdFR> 8 accessed 19 February 2019.
[33] ibid.
[34] ibid.
[35] World Bank, 'Nigeria - Report on the observance of standards and codes (ROSC)' (2011) <https://bit.ly/2CtZSTq > 7 accessed 19 February 2019.
[36] ibid.
[37] ibid.
[38] ibid 13.
[39] Damilare Famuyiwa, 'World Bank rates Nigeria among top 20 improvers in doing business' *Nairametrics* (28 September 2016) < https://bit.ly/2PswBz0> accessed 21 February 2020; 'Azuka Azinge's Two Years As Head of Corporate Affairs Commission (CAC)' *Proshare* (11 October 2019) < https://bit.ly/3832aGi> accessed 21 February 2020.

2.2.1.2. Securities and Exchange Commission

The Securities and Exchange Commission (SEC) is the government agency responsible for the regulation of the capital market in Nigeria, with the stated objective of contributing to the nation's economic development through the development and regulation of an efficient capital market.[40] The SEC was established by the Securities and Exchange Commission Decree No. 71 of 1979, although its current powers are derived from the Investment and Securities Act 2007 (ISA). Its functions and powers include the regulation of: investments and securities, securities exchanges, all offers of securities, the operation of capital market operators, all forms of collective investment schemes, foreign portfolio investment, credit rating agencies, and review and approval of mergers, acquisitions and all forms of business combinations, amongst others.[41] As a result, the SEC is designed to fulfil a very broad remit as the capital market regulator, which it does through 17 departments.[42] Of these departments, the Financial Standard and Corporate Governance Department (FS&CG) has specific responsibility for corporate governance. It expressly has the mandate to produce and ensure compliance with the code of corporate governance, and review the financial health of publicly listed companies in Nigeria.[43] The SEC's corporate governance function is also empowered by the provisions of the ISA, which state that all public companies with registrable securities are required to file periodic audited financial statements with the SEC, audited by SEC approved auditors.[44] These annual statements are required to include a report from the board of directors on the company's internal control systems and their effectiveness.[45]

As discussed in subsection 2.2.2.2. below, the SEC took the lead in the arena of corporate governance regulation through the introduction of the first code of corporate governance, and has remained active through multiple revisions to this code. All public companies and companies which seek to issue

[40] SEC Nigeria, 'What we do' < https://bit.ly/2PskUbu> accessed 26 February 2020.
[41] Section 13.
[42] SEC (n 40).
[43] ibid.
[44] s60, 62.
[45] s61.

securities via the capital market fall within the SEC's corporate governance supervision, and are therefore required to comply with the codes' provisions.[46]

On the question of the SEC's ability to effectively discharge its duties, the ROSC reports once again provide some information. In 2004, the ROSC report stated that the SEC was not able to monitor compliance of companies with their financial reporting obligations.[47] Consequently, the SEC enforcement mechanisms were weak, and its sanctions were found to be incapable of deterring noncompliance.[48] A further complicating factor was that the SEC often got into conflicts with the Nigerian Stock Exchange over which body had the authority to discipline noncompliant companies.[49] The 2011 report subsequently found that the SEC's officials responsible for monitoring and compliance lacked the adequate knowledge required to discharge their duties, and also found that the capacity of the FS&CG department was weak.[50]

Nonetheless, the SEC has made recent efforts to bolster its function as corporate governance regulator. As outlined in Section 1.1., the SEC in 2014 introduced mandatory compliance with the provisions of its corporate governance code, with penalties prescribed for any breach. The SEC demonstrated its commitment to this stringent approach in 2017 when it first suspended trading in the shares of one of Africa's largest indigenous energy companies as a result of non-compliance with the provisions of the code of corporate governance, false disclosures, insider dealing, and related party transactions amongst other breaches.[51] This suspension was subsequently followed by the SEC's forced removal of the company's board members, and disqualification of the company's chief executive officer and deputy from being directors of public companies for five (5) years.[52] Although these regulatory interventions

[46] SEC, 'Code of Corporate Governance for Public Companies in Nigeria' (2014) < https://bit.ly/32zfpNv> accessed 21 February 2019.
[47] World Bank (n 32) 9.
[48] ibid.
[49] ibid.
[50] World Bank (n 35) 14.
[51] SEC Nigeria, 'Public Notice: Notice to the General Public on Oando Plc' (2017) <https://bit.ly/2w76mrg> accessed 21 February 2020.
[52] SEC Nigeria, 'Press Release on Investigation of Oando Plc' (2019) <https://bit.ly/32v9RUm> accessed 21 February 2020.

are being challenged in the Nigerian courts, the SEC needs to build on this episode by enhancing its monitoring and enforcement capabilities for the ultimate wellbeing of corporate governance structures.

2.2.1.3. Nigerian Stock Exchange

The Nigerian Stock Exchange (NSE) is Nigeria's primary and Africa's second largest bourse, and it offers capital market listing and trading services to market participants in the country.[53] It was established in 1960 as a company limited by guarantee, and is currently regulated by the SEC under the auspices of the ISA.[54] As of December 2019, the NSE was host to a total of 161 listed companies, comprising of 8 companies on its Premium Board, 144 on its Main Board, and 9 companies on its Alternative Market Board. The NSE was also host to 154 bond listings, 9 Exchange Traded Funds and 53 memorandum listings, with an aggregate market capitalisation of about 28 trillion Naira (77 billion USD).[55] These figures however highlight the limited size and role the NSE plays in the Nigerian financial system, in view of the fact that over 800,000 companies are reported to be registered in Nigeria.[56]

In a developed stock exchange-based financial system for instance, the stock market is a dominant provider of equity and finance, and therefore provides a market for corporate control, which is a key corporate governance mechanism that incentivises corporate management to run companies for the benefits of their shareholders.[57] The NSE's relatively small market therefore calls into question its influence on corporate governance development.[58]

Nonetheless, the NSE's participation in the corporate governance regulatory framework manifests in a number of ways, the first of which is its publication of listing rules for companies seeking to trade and

[53] The Nigerian Stock Exchange, 'Corporate Overview' (2020) <https://bit.ly/2vrAaP7> accessed 27 February 2020.
[54] ibid.
[55] ibid.
[56] World Bank (n 35).
[57] Okike (n 24) 177.
[58] Adegbite (n 3) 267.

admit their securities on its floor.[59] The NSE also approves the returns of companies, and reviews them for compliance with the listing rules, and the accounting standards and disclosure required under the ISA and the Companies and Allied Matters Act.[60] Furthermore, only audited financial statements approved by the NSE are permitted to be published to the public.[61] The NSE's oversight here is highly important, not least because research indicates that a significant proportion of corporate failures are attributable to inadequate and manipulated financial statements.[62]

In addition to the provisions of the its listing rules, the NSE expressly demands compliance with the SEC's code of corporate governance as well as all governance disclosure requirements issued by the SEC.[63] The listing rules also provide that every issuer on the Premium Board shall disclose in its annual report a list of codes of corporate governance to which it is subject, as well a statement signed by the chairperson of the board and company secretary, disclosing the level of compliance with the code(s)' provisions. Where full compliance is not the case, a detailed statement of non-compliance and the explanations for them is required.[64]

In evaluating the effective discharge of the NSE's functions, the ROSC reports again provide useful insight. The 2004 report highlighted that there were often conflicts between the NSE and the SEC about which body had the authority to supervise and discipline non-compliant companies.[65] The subsequent report in 2011 added that the NSE did not possess any monitoring and enforcement mechanisms with regards to the accounting and disclosure obligations of companies within its purview, and as such financial statements were not being reviewed for these purposes.[66] Instead the NSE was solely concerned with ensuring the financial statements were filed timeously, and yet the report observed that

[59] The Nigerian Stock Exchange, 'Rulebook of the Nigerian Stock Exchange' (2015) < https://bit.ly/2KpItij> accessed 28 February 2020.
[60] ibid 170.
[61] ibid.
[62] Geoffrey Whittington, 'Corporate Governance and the Regulation of Financial Reporting' (1993) 23 Accounting and Business Research 311.
[63] (n 59) Rule 9.
[64] ibid Rule 12.4.
[65] World Bank (n 32).
[66] ibid.

there were still companies with overdue financial statements.[67] The 2011 ROSC report therefore concluded that the NSE's monitoring and enforcement mechanisms were very weak.[68]

However, the NSE has since taken steps to enhance its corporate governance regulatory function. The NSE issued an aggregate of fines to the amount of 452 million Naira (1.2 million USD) and 429 million Naira (1.1 million USD) in the years 2018 and 2019 respectively, punishing companies for various breaches including unauthorised publications, non-disclosure of resolutions passed at board meetings, and defaults in filing of financial statements.[69] In addition, the NSE in its February 2020 compliance report stated that it had suspended 13 companies for serial failures to file relevant accounts between 2017 and 2019, and commenced the delisting of 5 companies for similar breaches.[70]

Furthermore, the NSE in conjunction with the Convention on Business Integrity (CBI) has launched the Corporate Governance Rating System (CGRS). According to them, this rating system uses diverse data collection and verification assessments based on self-assessments by companies, and the participation of companies' stakeholders and governance experts.[71] The CGRS evaluates companies' corporate governance worthiness based on four elements: corporate integrity; compliance with NSE rules and relevant general corporate governance rules, such as the SEC Code as well as sector specific codes; certification of directors; and confirmation by a survey of key stakeholders of a company's integrity.[72]

The CGRS score is an aggregation of scores for: corporate compliance assessment (50%); a Fiduciary Awareness Certification Testing (FACT) of directors of the company (10%); and Corporate Integrity assessments based on feedback from a stratified, random sample of stakeholders (20%); and an Expert

[67] ibid.
[68] ibid.
[69] The Nigerian Stock Exchange, 'X-Compliance Report' (2020) <http://www.nse.com.ng/Listings-site/corporate-disclosure-site/Documents/X-Compliance.pdf> accessed 28 February 2020; Olushola Bello, 'NSE Sanctions 35 Companies N452m in 11 months' *Leadership* (27 November 2018); Damilare Famuyiwa, 'NSE fines 38 firms N429.5 million over 52 offences' *Nairametrics* (4 February 2019).
[70] The Nigerian Stock Exchange (n 69).
[71] The Nigeria Stock Exchange, 'NSE, CBI Launched Corporate Governance Rating System' (2014) <https://bit.ly/2K13am1> accessed 10 June 2018.
[72] ibid.

Multi-Stakeholder Group (EMSG) (20%).[73] The CGRS covers themes including Business Ethics & Anti-corruption, Internal & External Audit and Control, Shareholder & Stakeholder Rights, Board structure and Responsibilities, and Transparency and Disclosure. The CGRS score is reviewed at least one every three years to provide an updated outlook of companies' governance outlook. A company is deemed to have good corporate governance mechanisms only if it attains a minimum overall rating of 70%. As of February 2018, 37 companies and 437 directors had successfully satisfied the CGSR test requirement.[74] Successful companies are awarded a 'CGRS rated' badge, which they are encouraged to display on their websites and promotion material to showcase their good governance status.[75] These companies also have the special characters 'CG+' appended to their names on the NSE's trading engine and website to reflect their CGRS success.[76] However, these privileges are to be withdrawn upon the revocation or suspension of a company's CGRS status.[77]

The CGRS score has also been adopted by the NSE as part of the criteria for listing on the Premium Board, a listing group which denotes those companies that are industry leaders in their sectors, and meet the NSE's highest governance and listing standards. The NSE has also created a tradeable basket called the Corporate Governance Index, which collates only those listed companies which satisfy the CGRS score for the attention of governance conscious investors.[78]

Whilst there is a limit to the accuracy of the CGRS as a measure of good corporate governance practice, the CGRS is a welcome development as it provides a valuable source of information for conducting research into corporate governance compliance. The CGRS also provides a clear motivation for companies through the associated increase in credibility and attraction to prospective investors. The

[73] The Convention on Business Integrity, 'Corporate Governance Ratings System' <https://bit.ly/2E7JwPh > accessed 10 June 2018.
[74] 'NSE, CBI Honour Companies and Directors for Passing Corporate Governance Rating Assessment' *Proshare Nigeria* (23 February 2018) < https://bit.ly/2JN6VfT > accessed 10 June 2018.
[75] The Nigerian Stock Exchange, 'Circular on CGRS Incentives and Use of the CGRS Rated Badge ' (2020) < https://bit.ly/32A2k6D> accessed 28 February 2020.
[76] ibid.
[77] ibid.
[78] ibid.

concerns that the CGRS ratings may amount to a box ticking exercise should not be dismissed out rightly, and great care has to be taken to prevent this eventuality. However, the desire to attain high CGRS scores and membership of the Premium Board may motivate companies to enhance their governance practices, particularly because such successes are likely to attract domestic and international investors.

2.2.1.4. Central Bank of Nigeria

Established by the Central Bank of Nigeria (CBN) Act 1958, the CBN is the apex regulatory body for the banking and financial sector, charged with the administration and control of the Nigerian Government's monetary and financial sector policies.[79] The CBN's objectives as mandated in the CBN Act and the Banks and Other Financial Institutions Act 1991, include ensuring monetary and price stability, issuing legal tender currency, maintaining external reserves, acting as banker, economic, and financial advisor to the Nigerian government, and ensuring high standards of banking practice and financial stability.[80]

The last objective, which requires the promotion of a sound financial system, has served as the launchpad for the CBN's involvement in the corporate governance regulatory framework, not least because the regulated constituents i.e., banks, play an outsized role in the Nigerian corporate sphere. This is because they represent a significant proportion of general corporate activity, they are among the most profitable companies in Nigeria, and comprise of half of the number of companies listed on the Premium Board of the Nigerian Stock Exchange, which are described as the most elite group of companies.[81] Consequently, through its close supervision of banks, the CBN has become a key regulator of the corporate affairs of some of the jurisdiction's most significant companies, and therefore is a key corporate governance player.

[79] Central Bank of Nigeria, 'About CBN' (2020) < https://bit.ly/3ame1jZ> accessed 28 February 2020.
[80] ibid.
[81] World Bank (n 32); The Nigerian Stock Exchange, 'Premium Board' (2020) < https://bit.ly/2witYt3> accessed 28 February 2020.

The CBN's regulatory influence manifests in a number of ways. In the first instance, the CBN regulates financial reporting and, as such, all banks are required to submit their audited financial statements to the CBN for approval in accordance with the Banks and Other Financial Institutions Act 1991.[82] In addition, all external auditors are appointed and terminated only with the CBN's approval, and these auditors are required to send regular reports about the health of the banks under audit.[83] The CBN also conducts quarterly meetings with auditors during the term of their appointment, as well as exit meetings following their termination of their appointment.[84]

Further, the CBN Governor possesses the power to order an investigation into the books and affairs of any bank when deemed necessary.[85] This power was most notably exercised in 2009, resulting in the dismissal of the Chief Executive Officers and executive directors of 8 major Nigerian banks, following investigations into allegations of fraudulent activities and corporate governance malpractices.[86]

The CBN also regulates corporate governance in banks through the issuance of codes of corporate governance, which often contain more extensive provisions than their contemporaries, the most recent of which is the Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014. For example, the 2014 code states that: directors must attend at least two-thirds of board and committee meetings; no two members of the same extended family may serve as Chairman and CEO of the bank or its subsidiaries at the same time; all board committees must have charters, which must be approved by the CBN; the appointment and removal of Chief Compliance Officers must be ratified by the CBN; and, the remuneration of executive directors must be determined by a committee of non-executive directors, amongst other provisions.[87] Compliance with this code's provisions is mandatory, and banks

[82] s27.
[83] Banks and Other Financial Institutions Act 1991, s 29.
[84] World Bank (n 35) 6.
[85] Banks and Other Financial Institutions Act 1991, s 33.
[86] Vanguard, 'CBN sacks Adenuga, Bank PHB, ETB, Spring Bank MDs' (*Vanguard Newspapers*, 3 October 2009) < https://bit.ly/3cnyQxt> accessed 28 February 2020.
[87] Central Bank of Nigeria, 'Code of Corporate Governance for Banks and Discount Houses in Nigeria' (2014) paras 2.3.2., 2.6.2, 5.2.7 < https://bit.ly/32HQiZ2 > accessed 22 February 2020.

are required to submit quarterly returns disclosing their compliance with these provisions.[88] The bank's external auditors are also required to submit annual reports about the compliance rates.[89] In addition, the CBN has subsequently issued codes of corporate governance for other financial institutions, including microfinance banks, primary mortgage banks, bureaux de change, mortgage refinance companies, and development finance banks in Nigeria.[90]

Non-compliance with the CBN's corporate governance and financial accountability expectations exposes banks to sanctions, which extend from fines, imprisonment, and suspensions, to the revocation of banking licences.[91] Regulation here is vital because the residual risk bearers are not just the shareholders, but depositors whose financial security could be jeopardised by governance failures. This is drawn into sharp focus by the number of bank collapses and interventions which have occurred. Since 1998, there have been 45 bank closures in Nigeria as well as several regulatory interventions.[92]

Whilst the CBN has demonstrated strong regulatory capacity, the ROSC reports state that its capacity needs further strengthening, as it has struggled to keep up to date with recent growth and developments in the banking sector.[93] In addition, the CBN and NSE occasionally hold discordant positions on the validity and publication of banks' annual statements, which often means banks are not able to publish statements until both regulators are in agreement.[94]

2.2.1.5. Financial Reporting Council of Nigeria

The Financial Reporting Council of Nigeria (FRCN) is the most recently established regulator of relevance to this discussion. However, the FRCN is in reality a statutory enhancement of the former

[88] ibid para 1.2.
[89] ibid.
[90] Central Bank of Nigeria, 'Codes of Corporate Governance for Other Financial Institutions in Nigeria' (2018) < https://bit.ly/2I6lebR> accessed 28 February 2018.
[91] CBN (87) para 8.1.3.; Banks and Other Financial Institutions Act 1991, s 60.
[92] Nigeria Deposit Insurance Corporation, 'List of closed financial institutions' (2020) < https://bit.ly/3co0cDw> accessed 23 February 2020.
[93] World Bank (n 32) 6.
[94] ibid.

Nigerian Accounting Standards Board (NASB), the organisation which was previously given the responsibility for regulating accounting standards in the country.[95] The NASB was originally established as a private sector body, but subsequently became a government agency in 1992, and was given statutory empowerment under the Nigerian Accounting Standards Board Act 2003.[96] However, reports, including those of the World Bank and the IMF, found that NASB was severely under-resourced, and therefore lacked the financial and human resources required to monitor and enforce compliance with accounting standards.[97] The reports disclosed that there was an urgent need to purchase new equipment, retrain and hire new staff, and improve remuneration packages.[98] A further recommendation was that the NASB be amended into the FRCN, such that this new body would adopt the organisational structure of the UK's Financial Reporting Council.[99]

Consequently, the FRCN was established in 2011 by the Financial Reporting Council of Nigeria Act of 2011. The FRCN possesses regulatory jurisdiction over all public interest entities, which are defined as all government organisations, listed and unlisted companies, and all other organisations which are legally obliged to file returns with regulatory authorities, except companies that only file returns with the CAC and the Federal Inland Revenue Service.[100] This broad remit means that the FRCN's coverage extends from the public to the private sector. The Act empowers the FRCN to: produce and issue financial reporting standards; enforce compliance with corporate governance and financial reporting standards; harmonise the activities of corporate governance and accounting regulators; and, receive financial statements of public interest entities, amongst other functions.[101] The FRCN discharges these functions through the operations of six directorates of accounting standards, auditing practice standards, actuarial standards, valuation standards, inspection and monitoring, and corporate governance. Each directorate is operated by a team of experts and professionals within the specific field of reference.

[95] Financial Reporting Council of Nigeria, 'Facts about the defunct NASB' (2020) < https://bit.ly/2x6XUIY> accessed 28 February 2020.
[96] ibid.
[97] World Bank (n 32) 8.
[98] ibid.
[99] ibid 22.
[100] Financial Reporting Council of Nigeria Act No.6 of 2011, s 77.
[101] ibid s 8-10.

Under the FRCN Act, all public interest bodies are required to submit copies of their annual reports and accounts, pay annual levies to the FRCN, prepare their financial statements in compliance with the FRCN's standards, and forward any other statements they submit to other regulators to the FRCN.[102] Noncompliance with these requirements may result in the imposition of a fine not exceeding 10 million Naira (24 thousand USD) or a term of imprisonment of the Chief Executive Officer not exceeding 6 months.[103] In addition, the FRCN is able to impose penalties for misleading financial statements, ranging in amount from 5 million Naira to 5 billion Naira (12 thousand USD to 12 million USD), and is dependent on the annual revenue of the entity and the severity of the offence.[104]

The FRCN also possesses the power to investigate non-compliance with its standards, with the financial burden for such investigations to be borne by the companies under investigation.[105] The current fees are fixed at 250,000 Naira (685 USD) per hour of investigation, and 1,000,000 Naira (2,700 USD) per day where an inspector is required to conduct onsite examinations of the company.[106] The FRCN also has the power to require Chief Executive Officers and Chief Financial Officers to relinquish bonuses and remuneration where their companies are required to restate their accounts.[107]

The FRCN demonstrated its regulatory capacity in 2015 when it suspended the Chairperson, Managing Director and key executives of a Nigerian bank along with its external auditors over allegedly misleading accounting statements.[108] The FRCN also directed the board of directors of this bank to withdraw and restate the financial statements for relevant years in accordance with the FRCN's standards.[109] This regulatory action was challenged by the CBN which had approved the financial statements for those years, and resulted in a public dispute between the CBN and the FRCN.[110] During

[102] ibid.
[103] ibid s 33, 65.
[104] ibid.
[105] ibid s62.
[106] ibid.
[107] ibid s8.
[108] Mayowa Tijani, 'FRC suspends Stanbic IBTC directors, KPMG' *The Cable* (26 October 2015) < https://bit.ly/3aAdv2j > accessed 28 February 2020.
[109] ibid.
[110] Ogala Emmanuel, 'FRC lacks the authority to suspend Stanbic IBTC's directors, says CBN' *Premium Times* (4 November 2015) < https://bit.ly/2IiqMjD> accessed 28 February 2020.

this dispute, the CBN stated that the FRCN had continuously demonstrated its disregard for its contemporary financial regulators, as it had routinely failed to consult with them during the exercise of its mandate.[111] The issue of the relationship between regulators of corporate governance in Nigeria is a key theme explored in this thesis.

In addition, in 2016, the FRCN issued the National Code of Corporate Governance pursuant to its objective to harmonise and unify the existing sectoral codes in Nigeria.[112] However, this code was a combination of three sectoral codes: the Code of Corporate Governance for the Private Sector, the Code of Corporate Governance for the Public Sector, and the Code of Corporate Governance for Not for Profit Organisations.[113] The Private Sector code applied to all listed and unlisted companies, and all private companies that were holding companies or subsidiaries of public companies.[114] The most controversial of the codes was the code for the Not for Profit Organisations, as it introduced term limits for heads of these organisations, requiring current heads to step down.[115]

The FRCN's exercise of its functions in these two instances was subject to much criticism from stakeholders. Some stakeholders accused the FRCN of being too heavy handed in the discharge of its functions,[116] and indeed a substantial number of the FRCN's regulatory interventions have been successfully litigated against.[117] These negative perceptions ultimately led to the dismissal of the FRCN's executive secretary, and the reconstitution of the FRCN's board in 2017.[118] Following this leadership overhaul, the FRCN has adopted a less abrasive approach, as evidenced by its decision to suspend some of its market regulations, and its replacement of the 2016 codes with the Nigerian Code

[111] ibid.
[112] Financial Reporting Council of Nigeria, 'National Code of Corporate Governance 2016' (2016) 4.
[113] ibid.
[114] ibid.
[115] George Etomi & Partners, 'Nigeria: the financial reporting council of Nigeria - national code of corporate governance' (2017) *Mondaq* < https://bit.ly/2tiPIj9> accessed 2 June 2018; Phillips, Amadi and Emeifeogwu (n 19).
[116] ibid.
[117] *Eko Hotels Ltd v Financial Reporting Council of Nigeria* (Unreported: Suit No. FHC/L/CS/1430/2012 delivered on 21/03/2014); *Stanbic IBTC Holding Plc v. Financial Reporting Council of Nigeria & Anor* (2018) LPELR-46507 (CA).
[118] FRCN, 'Latest development' < http://bit.ly/2ESn00B> accessed 20 January 2018.

of Corporate Governance 2018 which only applies to the private sector, and which is principles-based without sanctions for non-compliance.[119]

2.2.2. Legislation, Listing Rules, and Codes of Corporate Governance

In the preceding subsection, the key regulatory bodies of corporate governance in Nigeria were discussed, along with their remits, their contributions, and their regulatory capacities. The focus in this subsection now turns to the major pieces of direct corporate governance regulation that apply to Nigerian companies.

2.2.2.1. Companies and Allied Matters Act

Corporate governance in Nigeria is statutorily entrenched in the Companies and Allied Matters Act (CAMA),[120] the country's primary embodiment of company law which is administered by the CAC. The CAMA was first enacted in 1990 to repeal the Companies Act of 1968, with the intention of updating the legislation with provisions suited to Nigeria. While some of such provisions were introduced, many of the Act's provisions were mirrors of the U.K.'s Companies Act of 1985, once again demonstrating the influence U.K. company law has had on its Nigerian counterpart.[121] However, as of February 2020, this Act had not been updated in the thirty years following its enactment, a state of affairs which the Nigerian Senate described as an impediment to the development of modern business practices in Nigeria.[122]

The CAMA is the operative company legislation which establishes the legal structure for the formation, operation, and management of companies. It provides the rules that guide the relationship between the board of a company and shareholders and, until 2003, Part A of this Act functioned as the sole regulatory framework for corporate governance, through its core provisions concerning directors and their duties,

[119] KPMG, 'Financial Reporting Council of Nigeria revokes "Rule 4"' (2019) < https://bit.ly/2uObUX9> accessed 28 February 2020; Babajide Komolafe 'FRC moves to develop new National Code of Corporate Governance' *Vanguard* (Lagos, January 22, 2018) < http://bit.ly/2GokN9Z> accessed 25 January 2018.
[120] Act no 3 2020, repealed the 1990 version of the same Act.
[121] Okike (n 24) 176.
[122] Senate of the Federal Republic of Nigeria, 'Summary: Benefits of the Companies and Allied Matters Act (CAMA) (Repeal and Re-enactment) Bill, 2018 (SB. 355)' < https://bit.ly/2SFFN45> accessed 3 February 2020.

disclosure obligations, and minority protection.[123] However, the CAMA is not without its problems. In addition to its outdated nature, the CAMA is often criticised for its weak enforcement mechanisms and inadequate deterrence incentives, which in effect enable corporate malfeasance.[124] For instance, the fines the CAMA imposes on companies that flout its provisions range from 10 Naira to 5,000 Naira (approximately 0.02 USD to 12 USD).[125] The CAMA's applicability is also further compromised by the inefficiency of Nigeria's judicial system, which often struggles to enforce laws and legal rights expeditiously.[126]

However, at the turn of the century, seismic corporate scandals across the world, including the collapses of BCCI, Maxwell, Barings Bank, WorldCom, and Enron emphasised the need for dedicated corporate governance regulation.[127] This led to the issuance of codes of corporate governance to address issues deemed to be insufficiently covered by company legislation. The U.K. led the way in the issuance of these governance guidelines, thanks to the publication of the Cadbury Report, the Greenbury Committee, the Combined Code on Corporate Governance, and the Revised Combined Code from 1992 – 2003.[128] Nigeria responded accordingly with the issuance of its first code of corporate governance, issued by the Securities and Exchange Commission (SEC) in 2003.

In recognition of the outdated nature of the CAMA, the Nigerian Senate and House of Representatives passed the Companies and Allied Matters Act 2004 (Repeal and Re-enactment) Bill in 2019, which received presidential assent in August 2020, and which intends to address the CAMA's shortcomings and stimulate investment activities in Nigeria.[129]

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[123] Fidelis Ogbuozobe, 'A consideration of the impact of the Companies and Allied Matters Act (1990) and the Insurance Act (2003) on the board of insurance companies in Nigeria' (2009) 51 International Journal of Law and Management 336 <https://bit.ly/2HcQu8D> accessed 3 February 2020.
[124] Kenneth Okpala, 'Fiscal accountability dilemma in Nigeria public sector: A warning model for economic retrogression.' (2012) 3(6) Research Journal of Finance and Accounting 113.
[125] Central Bank of Nigeria, 'CBN Exchange Rates – February 2020' <https://bit.ly/2vsZa8A> accessed 4 February 2020.
[126] Boniface Ahunwan, 'Corporate Governance in Nigeria' (2002) 37 Journal of Business Ethics 287.
[127] Financial Reporting Council 'History of the UK Corporate Governance Code' < https://bit.ly/37mL5GR> accessed 28 January 2020.
[128] ibid.
[129] (n 122); KPMG Nigeria, 'The sea is history – the Companies and Allied Matters Act, 2020 aspires to optimize corporate regulation in Nigeria' (2020) < https://bit.ly/3v459Kd> accessed 30 August 2020.

2.2.2.2. SEC Codes of Corporate Governance for Public Companies

In June 2000, the SEC inaugurated the Committee on Corporate Governance of Public Companies in Nigeria, with the objective of aligning Nigeria with international best practices through the production of the country's first code of corporate governance.[130] The SEC justified this motivation on the basis that countries and companies that adopt the best practices of corporate governance are more likely to be investment targets for international investors.[131] This motivation was further expressed in the Committee's terms of reference, which required the examination of corporate governance codes in other jurisdiction 'with a view to the adoption of international best practices in corporate governance in Nigeria.'[132] In 2003, the Committee fulfilled its mission through the production of the principles-based Code of Corporate Governance for Public Companies.

Although the 2003 Code was the first of its kind, and served as a clear indication of the SEC's consideration of corporate governance standards, it was not widely regarded as a success. Okike and Adegbite posit that because it adopted governance guidelines created for more developed economies, the 2003 Code was unsuited to Nigerian companies from inception.[133] Other scholars including Nat Ofo argue that the 2003 was poorly implemented, and thus its impact was negligible on the state of governance standards.[134] In addition, Junaidu Marshall argues that the 2003 Code was rendered inadequate by the SEC's failure to review and update the code in response to seismic corporate governance scandals in Nigeria.[135] Notable scandals at this time involved Afribank Nigeria Plc and Cadbury Nigeria Plc, who were found to have overstated their accounts by over 100 million USD.[136] The SEC's lethargy in this regard is said to have encouraged regulators of the banking, insurance and

[130] Securities and Exchange Commission, 'Code of Best Practices for Public Companies' (2003); Elewechi Okike and Emmanuel Adegbite, 'The code of corporate governance in Nigeria: Efficiency gains or social legitimation?' (2012) 95 Corporate Ownership and Control 262.
[131] SEC (n 130) para 2.
[132] ibid.
[133] Okike and Adegbite (n 130) 267.
[134] Nat Ofo, 'Corporate Governance in Nigeria: Prospects and Problems' (2010) < https://bit.ly/2JBqk3N> accessed 28 January 2019.
[135] Junaidu Marshall, 'Evolution of Corporate Governance Codes in Nigeria' (2015) 3 International Journal of Business and Law Research 49.
[136] Owolabi Bakre, 'The unethical practices of accountants and auditors and the compromising stance of professional bodies in the corporate world: Evidence from corporate Nigeria' (2007) 3 Accounting Forum 277.

pensions industry to issue dedicated corporate governance codes for companies within their purview, as outlined in subsections to follow, in an attempt to address the challenges to governance which the 2003 Code could not curtail.[137]

Subsequently, the SEC conducted a review of the 2003 Code with a view towards addressing the challenges encountered in its implementation. This review culminated in the publication of the SEC's 2011 Code, encompassing five major principles of leadership, board structures, remuneration, accountability and shareholder relations.[138] The 2011 Code was to serve as the minimum standard of corporate governance for all public companies, companies with listed securities, and companies seeking to raise funds from the capital market.[139] Recognising the existence of other sectoral codes, the 2011 Code stated that where a company is covered by another sectoral code, that company is to follow the provisions of the stricter code on any particular subject matter.[140] The 2011 Code was praised for: providing a clear definition of independent directors; introducing annual evaluations for boards of directors; and, outlining the expected level of financial literacy for audit committees.[141] Ofo therefore argued that it was the most comprehensive code of corporate governance in operation when it was published.[142]

However, the 2011 Code was also subjected to criticism, particularly because there was no clarity on the enforcement status of the Code. It appeared that the Code was both voluntary and mandatory in part, which led to considerable confusion amongst stakeholders.[143] Ofo also argued that the 2011 code's conflict resolution mechanism was unhelpful and was likely to cause regulatory arbitrage, because the determination of the stricter provision between conflicting codes is very much open to interpretation.[144]

[137] Marshall (n 135).
[138] Securities and Exchange Commission, 'Code of Corporate Governance for Public Companies' (2011).
[139] ibid; Marshall (n 135).
[140] SEC (n 130) Section 1.
[141] Nat Ofo, 'Code of Corporate Governance in Nigeria 2011: Its fourteen fortes and faults' (2011) <https://bit.ly/2SLKEAC> accessed 10 February 2020.
[142] ibid.
[143] Adegbite (n 3) 257; Ofo (n 134).
[144] Ofo (n 134) 25.

Following a further review of the corporate governance code, the SEC in 2014 decided that the level of governance required strengthening.[145] Therefore, the SEC made the Code of Corporate governance mandatory, and all optional language in the code were replaced with mandatory language.[146] The SEC also prescribed fines for non-compliance, in addition to other sanctions as may be imposed at its discretion.[147] This relatively recent move is yet to be subject to extensive debate, however, it may be seen as an attempt by the SEC to remain the dominant corporate governance regulator, in the wake of the other co-existing corporate governance codes which will now be discussed below.

2.2.2.3. CBN Codes of Corporate Governance

In 2005, the CBN in its capacity as Nigeria's apex bank industry regulator, ordered a consolidation of Nigerian banks as part of its strategy to end the continuous collapse of banks.[148] This exercise resulted in merger activities, which consolidated the number of commercial banks in existence from 89 to 25.[149] Following the completion of this exercise, the CBN introduced the Code of Corporate Governance for Banks Post-Consolidation 2006 in order to ensure that the newly consolidated banks had robust corporate governance practices, sufficient to overcome the perennial challenges in the banking industry.[150] Some of these challenges were: ineffective board oversight; fraud; dominant influence of Chairpersons and Managing Directors; apathetic directors; technical incompetence; conflicts of interests, concentrated family ownership; and inadequate disclosure and transparency, amongst others.[151]

This code introduced provisions which provided that each bank's external auditors submit reports to the CBN on risk management practices, internal controls and compliance levels, each bank's CEO and Compliance Officer produce annual statements certifying that there have been no corporate governance

[145] (n 1).
[146] ibid.
[147] ibid.
[148] Okike and Adegbite (n 130) 270.
[149] Marshall (n 135) 56.
[150] Central Bank of Nigeria, 'Code of Corporate Governance for Banks in Nigeria Post Consolidation' (2006), para 1.
[151] ibid.

breaches, and no two or more members of the same family occupy senior positions in the same bank.[152] Crucially, the CBN demanded absolute compliance with these provisions, and stated that false statements would attract fines, along with the suspension of the guilty CEO for six months in the first instance, and blacklisting in the second instance.[153] Despite the introduction of these provisions, Okike and Adegbite state that the CBN was not able to accomplish its objectives as a result of the underlying weaknesses in Nigeria's legal and regulatory framework.[154] In support of this assertion, they point to the fact that the CBN incurred a bill of over 4 billion USD in order to bail out 8 banks that suffered serious corporate governance breaches in 2009.[155]

The CBN bailout in 2009 induced a review of the 2006 Code, and culminated in the issuance of the Code of Corporate Governance for Banks and Discounts Houses in Nigeria and Guidelines for Whistle Blowing in the Nigerian Banking Industry 2014. The 2014 Code required that each bank's board issue quarterly reports on their compliance with the code's provisions.[156] The code also required the establishment of whistle-blowing policies, in order to enable the early reveal of governance malpractices in banks.[157]

2.2.2.4. National Pension Commission (PENCOM) Code of Corporate Governance for Licensed Pensions Operators

Perhaps taking its cue from the CBN, the PENCOM in 2008 issued a corporate governance code with application to all pension fund administrators (PFAs) and custodians (PFCs) in Nigeria. The stated objective was to ensure that each operator possessed the appropriate structures and processes required to attain optimal governance standards, through the provision of a common values system amongst

[152] ibid paras 2 – 7.
[153] ibid.
[154] Okike and Adegbite (n 130) 271.
[155] ibid.
[156] Central Bank of Nigeria, 'Code of Corporate Governance for Banks and Discount Houses in Nigeria (2014), para 2.
[157] ibid.

operators.[158] Although the code stated that it would be subject to periodic review by the PENCOM, the 2008 version remains unchanged as of February 2020.[159] The philosophy of the code appeared to be both voluntary and mandatory, because while the code states that the PENCOM will impose sanctions for non-compliance with the code's provisions,[160] it also provides that operators may disclose and explain deviations from the code's guidelines.[161] A key focus of the code was the maintenance of transparency within the pensions industry, through provisions prohibiting relationships and conflict of interests between PFAs, PFCs, and their service providers.[162] The PENCOM Code has been described as being less elaborate on substantive governance provisions in comparison to other codes in existence,[163] a situation which perhaps explains the limited focus on this code in the academic literature.

2.2.2.5. National Insurance Commission (NAICOM) Code of Corporate Governance for the Insurance Industry

Predicated upon its assessment that the insurance sector is a major driver of the Nigerian economy, the NAICOM issued the Code of Good Corporate Governance for the Insurance Industry in 2008 in order to stimulate the sector's growth potential and induce the country's economic growth.[164] The code expressly stated its intention to address the following issues of: non-compliance with rules and regulations; boardroom conflicts; ineffective board oversight functions; fraudulent practices; overbearing influence of Chairpersons and CEOs; passive shareholders; minority shareholder protection; conflicts of interests; and weak internal controls.[165] Compliance with this code was made mandatory for all insurance and re-insurance companies within the regulator's purview.[166] However, the code made no mention of the consequences of non-compliance with its provisions. Much like the

[158] National Pension Commission, 'Code of Corporate Governance for Licensed Pensions Operators' (2008) 2 < https://bit.ly/321LpK1> accessed 21 January 2020.
[159] ibid.
[160] ibid para 5.5.
[161] ibid para 5.4.
[162] ibid para 5.1.
[163] Ayokunle Adetula, 'A Review of Corporate Governance Codes in 2014' (2015) Stillwaters Law Firm <https://bit.ly/2wgZ8AO> accessed 22 January 2020.
[164] National Insurance Commission, 'Code of Good Corporate Governance for the Insurance Industry' (2008) para 1 < https://bit.ly/38z8u9z> accessed 15 February 2020.
[165] ibid para 3.
[166] Ofo (n 134).

PENCOM Code, this code has not generated the level of debate and attention stimulated by the SEC and CBN Codes.

2.2.2.6. Nigerian Communications Commission (NCC) Code of Corporate Governance for the Telecommunications Industry

In 2014, the NCC issued a voluntary code of corporate governance for companies within the telecommunications sector, with the expectation of stimulating growth within the sector and in the national economy.[167] However, following a two-year monitoring period, the NCC observed that companies within its purview significantly deviated from the principles of this code, thereby necessitating further regulatory intervention.[168] Consequently, the NCC decided to change the code's philosophy from a voluntary basis to a mandatory regime, with sanctions to be imposed for non-compliance in 2016.[169] The NCC also introduced an annual award of 'Good Corporate governance' to be awarded to the company which exhibits the highest degree of compliance to the code's provisions.[170] The NCC in so doing reiterated its conviction that the code will help to enhance corporate accountability and prosperity within the sector.[171]

2.2.2.7. FRCN Code of Corporate Governance

In 2011, the FRCN was established by the Financial Reporting Council of Nigeria Act 2011, with a mandate to improve governance practices in Nigeria. Subsequently, the FRCN was given a specific mandate by the Honourable Minister of Trade and Investment to harmonise and unify all the existing sectoral corporate governance codes in Nigeria.[172] The FRCN's stated objectives were to: develop principles and practices of corporate governance; promote the highest standards of corporate governance; promote public awareness about corporate governance principles and practices; and act as

[167] Nigerian Communications Commission, 'Code of Corporate Governance for the Telecommunications Industry 2016' (2016) < https://bit.ly/2P1xr5F> 5 accessed 18 January 2020.
[168] ibid.
[169] ibid.
[170] ibid para 1.4.
[171] ibid.
[172] Financial Reporting Council of Nigeria, 'National Code of Corporate Governance 2016' (2016) p. 4.

the national coordinating body responsible for all matters pertaining to corporate governance.[173] In accordance with its given mandate, the FRCN through its Directorate of Corporate Governance inaugurated a committee tasked with creating a National Code of Corporate Governance in Nigeria which would unify governance standards suited to the Nigerian context, whilst also conforming to the international best governance practices. Following the conclusion of the committee's report, the FRCN published the combined National Code of Corporate Governance (National Code) for the private, public and non-profit sectors in October 2016.[174] the National Code was a combination of three sectoral codes: The Code of Corporate Governance for the Private Sector, the Code of Corporate Governance for the Public Sector, and the Code of Corporate Governance for Not-for-Profit Organisations. Compliance with the provisions of the private sector, which applied to companies, was mandatory.

However, in line with a directive of the Federal Government of Nigeria, the FRCN suspended the National Code indefinitely, following outcries from stakeholders about the perceived failures of the code and the potential implications of its application.[175] Stakeholders generally agree that the NCCG for the Private Sector was problematic for three reasons: it required mandatory compliance; the code superseded all other corporate governance codes in force; and some of the code's provisions were in conflict with Nigerian company law.[176]

A technical committee was duly inaugurated in January 2018 to review the National Code and, on June 13 2018, the FRCN published the exposure draft of the new 'Nigerian Code of Corporate Governance 2018' (NCCG) ahead of a nation-wide consultation with stakeholders about its provisions.[177] On the 15th of January 2019, the NCCG was fully published, with the stated aim of entrenching the best

[173] FRCN, 'Facts about the FRCN' < http://bit.ly/2BDF3pg> accessed 15 January 2018
[174] ibid.
[175] FRCN, 'Latest development' < http://bit.ly/2ESn00B> accessed 20 January 2018; Babajide Komolafe 'FRC moves to develop new National Code of Corporate Governance' *Vanguard* (Lagos, January 22, 2018) < http://bit.ly/2GokN9Z> accessed 25 January 2018.
[176] (n 115).
[177] Financial Reporting Council of Nigeria, 'FRC exposes Nigerian code of corporate governance 2018' < https://bit.ly/2MAL9K6 > accessed 15 June 2018

practices in corporate governance in Nigeria in order to stimulate economic growth and restore investor confidence.[178]

The NCCG is a remarkable departure from its predecessor, most notably in its underlying philosophy. Whereas the National Code purported to be mandatory and superseded all other codes in existence, the NCCG retreats from this approach, adopting an 'apply and explain' model. This requires companies to apply the governance principles in ways which suit their specific circumstances, and explain how their specific practices fulfil the code's governance principles. [179] This apply and explain philosophy was influenced by the corporate governance structure of two other emerging markets which have undergone recent governance reforms, namely: Mauritius and South Africa.[180] Interestingly, the NCCG neither supersedes the pre-existing codes, nor does it contain conflict provisions to manage its relationship with them. Therefore, this means that as of February 2020, there were six codes of corporate governance in existence, each administered by a different regulator. As commentators have pointed out, this means in certain instances, a company may be subject to at least three different codes; banks, for instance, would have to consider the SEC, CBN, and FRCN codes, arguably resulting in over regulation.[181]

2.2.3. Summary of Regulatory Framework

To recap the discussion in this section, Nigeria's corporate governance regulatory framework is made up of a number of regulatory bodies and their respective enactments, regulations, and codes. While the regulatory bodies have demonstrated their activeness, evaluations reveal common structural weaknesses, not least: inadequate record keeping, weak compliance and monitoring mechanisms, overlapping regulatory remits which create conflicts, and insufficient human and financial resources.

[178] Financial Reporting Council of Nigeria, 'Nigerian Code of Corporate Governance 2018' (2018) available at <https://bit.ly/2vJ9M2U> accessed 13 February 2019.
[179] ibid v.
[180] (n 177).
[181] Phillips, Amadi and Emeifeogwu (n 19).

There has been a high rate of activity in the issuance of corporate governance codes, with different philosophies and operated by different regulators. This high level of activity was also seen to result in over-regulation for some public companies in Nigeria. From this discussion therefore, it is evident that the states of the regulatory bodies and their regulations need to be addressed if Nigeria is to successfully overcome the challenges to good corporate governance outlined in the following section.

2.3. Challenges of Corporate Governance in Nigeria

The effectiveness of corporate governance in Nigeria has been hampered by a number of perennial challenges and high-profile corporate scandals.[182] Some of the most cited challenges in the literature include weak legal institutions, corruption, multiplicity of governance codes and regulators, weak shareholder activism, and concentrated family ownership patterns.

Adegbite and other scholars argue that the principal problem of corporate regulation in Nigeria is the huge chasm between the precepts of the law and its implementation,[183] as government agencies and regulators lack the capacity to enforce the law, and thus operators are encouraged to flout laws without concerns for the consequences. Indeed, Nigeria ranks 106 out 126 countries on the World Justice Project's Rule of Law Index, which is the world's leading index on the rule of law across jurisdictions.[184] Nigeria scores very poorly in the Corruption, Civil Justice, and Regulatory Enforcement Categories.[185] Nigeria's legal system is also fraught with many difficulties, the most significant of which is the congestion of the courts system. Nigeria's courts are also highly congested that it often takes three to five years to arrive at a verdict at the court of first instance due to peculiarities and systemic failures.[186] For appealed cases, it could take several years to arrive at a final verdict. When combined with the frequent incidences of judicial corruption,[187] this environment may encourage individuals to engage in

[182] Okike (n 24).
[183] Adegbite (n 3); Nakpodia (n 4).
[184] World Justice Project, *Rule of Law Index* (World Justice Project 2019) 5.
[185] ibid 117.
[186] Jedrzej George Frynas, 'Problems of access to courts in Nigeria: Results of a survey of legal practitioners' (2001) 10 Social and Legal Studies 397.
[187] Habeeb Salihu and Hossein Gholami, 'Corruption in the Nigeria Judicial System: An Overview' (2018) 25 Journal of Financial Crime 668.

corporate fraud without fear of the repercussions. For example, the trial of executives allegedly responsible for a 300 million USD black hole in a Nigerian bank's books which began in 2009, had to start *de novo* in 2018, after almost a decade of delays.[188] An environment where scandals of that scale remain unresolved after almost a decade may not be reasonably expected to engender compliance with governance standards.

On the issue of regulatory enforcement, the World Bank ROSC reports shed some light on Nigerian regulators' ability to discharge their duties. In the 2004 ROSC, the SEC, CAC and NSE were all found to be incapable of effectively monitoring compliance with standards, and their administrative sanctions were deemed inadequate to deter non-compliance.[189] The 2011 follow-up report maintained that the officials responsible for monitoring and related activities in these regulatory bodies lack the requisite knowledge to discharge their duties, and therefore held that 'the capacity of the Financial Standards and Corporate Governance Department is weak.'[190] This is particularly concerning because research indicates that enforcement is more important in the creation of healthy governance practices and business environments, than the mere creation of substantive regulations.[191] As a result, the regulators' abilities to ensure the entrenchment of good corporate governance practices is called into question.

Another challenge to the practice of corporate governance is the multiplicity of governance codes as outlined in section 2.2 above. These codes operate on differing philosophies, and often contain different provisions, which inevitably results in confusion for companies who are subject to multiple regulation on the same issues. Research undertaken by Osemeke and Adegbite found that such multiplicity directly leads to poor compliance rates by companies, and cripples the regulators' abilities to enforce their

[188] Oladimeji Ramon, 'Court adjourns Francis Atuche, Ojo's N125bn fraud trial' *Punch Newspapers* (Lagos, 14 March 2019) < https://bit.ly/2HmHrEd > accessed 17 March 2019.
[189] World Bank, 'Nigeria - Report on the observance of standards and codes (ROSC)' (2004) 7 <https://bit.ly/2ucvdFR> accessed 19 February 2019.
[190] World Bank, 'Nigeria - Report on the observance of standards and codes (ROSC)' (2011) 7 <https://bit.ly/2CtZSTq > accessed 19 February 2019.
[191] Erik Berglof and Stijn Claessens, 'Enforcement and good corporate governance in developing countries and transition economies' (2006) 21 The World Bank Research Observer 123.

codes.[192] The emergence of the FRCN and the NCCG was expected to result in a harmonised code and philosophy. However, and as discussed in 2.2.7, the reality has been the production of yet another code, further compounding the challenge of regulatory multiplicity.

The final challenge reported is that of the ownership pattern of companies, which causes weak shareholder activism. Through shareholder activism, the shareholders of a company take an active interest in the company's activities, such that they organise to curtail any managerial opportunism and poor governance practices.[193] However, the level of shareholder activism in Nigeria is quite limited, a situation which is exacerbated by the ownership structure of companies, with ownership more often than not concentrated in the hands of dominant families or foreign multinationals and investors, and not dispersed across a vast number of shareholders. In an environment with weak legal systems as detailed above, this concentrates decision making, and endangers the interests of minority shareholders.[194]

Upon consideration of these challenges, it is evident that Nigeria's regulatory framework needs to acknowledge, resolve and account for these challenges in its design and implementation, particularly with regards to future reforms.

2.4. Research on Corporate Governance in Nigeria, and Gaps in the Literature

There are four key corporate governance studies of relevance to this thesis. First, Okike's 2007 study examined the then fledgling corporate governance system in Nigeria, with a particular focus on the SEC's 2003 Code, the roles of the Nigerian Government, the SEC and other stakeholders in the corporate governance process.[195] This study found the governance mechanisms in Nigeria to be weak,

[192] Louis Osemeke and Emmanuel Adegbite, 'Regulatory multiplicity and conflict: Towards a combined code on corporate governance in Nigeria' (2016) 133 Journal of Business Ethics 431.
[193] Adegbite (n 3).
[194] Olufemi Amao and Kenneth Amaeshi, 'Galvanising shareholder activism: A prerequisite for effective corporate governance and accountability in Nigeria' (2008) 82 Journal of Business Ethics 119; Boniface Ahunwan, 'Corporate Governance in Nigeria' (2002) 37 Journal of Business Ethics 287.
[195] Okike (n 24).

finding that companies ignored the provisions of the company legislation and governance codes because enforcement mechanisms were weak and ineffective. Okike also argued that the global pressure for corporate governance standards, heightened by globalisation and international capital markets, meant that the Nigerian regulators failed to appreciate the differences in the socio-economic environments in which Nigerian businesses operate when drafting the 2003 Code. This was particularly evident in the omission of provisions designed to counter the pervasiveness of corruption in Nigeria. Accordingly, Okike recommended: the imposition of more stringent penalties in the CAMA in order to improve compliance and enforcement rates; the establishment of a wholly independent corporate governance regulator; and, training of directors, shareholders, auditors and professional bodies, so that they might effectively discharge their roles in corporate governance.

Second, Adegbite's study in 2012 conducted an evaluation of Nigeria's corporate governance regulatory system using institutional theory, with a view towards exploring how regulatory policy responses could be formulated to improve upon the system in the future.[196] Adegbite argued that a country's peculiar institutional arrangements, including the history, ownership structures, culture, socio-political factors, and the existence of ethical business conducts are crucial for the success of corporate governance regulation. This is because these institutional arrangements considerably influence the style of corporate governance regulation, so much so that they could collectively enable the success or frustrate the application of regulatory initiatives and corporate governance principles. Adegbite added that countries need to develop their unique corporate governance challenges which deal with their institutional challenges, and as such, care needs to be taken when corporate governance principles are adopted from other jurisdictions.

Applying these considerations, Adegbite recommended that corporate governance in Nigeria requires a rule-based mandatory system and regulatory intervention, in order to tackle the pervasiveness of corruption. However, this would only be a short-term solution, with principles-based approaches to be

[196] Adegbite (n 3).

applied in the long-term once the compliance rates improved. His approach utilises a fusion of both self-regulation and statutory regulation in order to combat Nigeria's different institutional environment.

The third study by Osemeke and Adegbite involved an examination of the implications of conflicts between Nigeria's various codes of corporate governance on the compliance of public companies in Nigeria, using virtue-signalling conflict theory.[197] They found that the existence of multiple codes results in ineffective corporate governance regulation in emerging markets, and in the context of Nigeria, they therefore recommended the creation of a mandatory combined code of corporate governance to strengthen enforcement and compliance.

The final study of reference was conducted by Nakpodia and other researchers, and applied institutional theory in their examination of the suitability of existing corporate governance regulatory frameworks for emerging markets.[198] They argue that the principles-based regulatory approach deployed in Nigeria is inconsistent with challenges in Nigeria such as corruption, poor compliance systems and information asymmetry, as they found that Nigeria's business environment does not possess the socio-economic sophistication required to make this strategy successful. Rather, they propose an approach which combines various regulatory strategies, starting with the use of mandatory rules, followed by the introduction of principles-based strategies thereafter. They also advocate for the involvement of multi-stakeholder regulation, a process by which the government, companies, and other stakeholders (including members of the public and employees) share the responsibility for drafting and enforcing regulatory provisions.

From the above studies, two areas are deemed worthy of further investigation. First, a basic consensus on mandatory corporate governance regulation exists in the literature, either as a short-term or long-term solution. It is therefore necessary to consider whether this is indeed the desired silver bullet for Nigeria's governance challenges. In this respect, the SEC's adoption of a mandatory regime in 2014,

[197] Osemeke and Adegbite (n 192).
[198] Nakpodia (n 4).

and the FRCN's consideration of this approach in 2016 are particularly interesting. It would be helpful to first examine whether in the six years since its introduction, this mandatory philosophy has succeeded in improving corporate governance standards, and in the event that the outcome is negative, whether this strategy can be viably applied in future reforms. This would inform the literature on the viability of a mandatory system in whole or in part, not only in Nigeria, but also in the wider context of emerging markets. Second, the literature is silent on other corporate governance developments which have taken place since 2014, particularly the emergence of the FRCN and the introduction of the NCCG, thus it is necessary to examine the impact of these developments on corporate governance in Nigeria.

2.5. Chapter Summary

In view of the research objectives outlined in Chapter 1, this chapter has provided the context for this research project by detailing the development and evolution of corporate governance regulation in Nigeria, the current regulatory framework, challenges to corporate governance, and the literature on corporate governance regulation in Nigeria. The provision of this context serves as the foundation for the consideration of theories of corporate governance regulation in the next chapter.

3. Literature Review

This chapter's aims are twofold: to review the existing literature on corporate governance and regulation, and to provide the theoretical framework for this research. Accordingly, this chapter is divided into four major sections. The first of these is section 3.1, which considers the various definitions and theories of corporate governance that significantly influence modern analyses of the field. Section 3.2 continues with a review of the concept of corporate governance regulation, and the contemporary approaches to this concept. Section 3.3 builds on these foundations by detailing the key theory of responsive regulation, which guides the analysis of the data gathered from the corporate governance experts in this thesis. Section 3.4 concludes by providing a summary of the chapter's contribution to this thesis.

This chapter integrates the distinct literature of corporate governance and that of regulation, and this amalgamation creates a workable foundation for corporate governance regulation. This approach is justified on the basis that corporate governance regulation on its own remains a niche area in the literature, and is therefore best treated as a merger of the two fields of corporate governance and regulation. Altogether, the review of the conceptual and empirical literature in this chapter provides the foundation upon which this thesis is built, and emphasises the nature of this research project's contribution to the literature.

3.1. Definitions and Theories of Corporate Governance

In order to understand corporate governance regulation, it is necessary to first define the concept of corporate governance. In doing so, it is important to note that the literature on corporate governance is relatively mature and highly multidisciplinary, and research on corporate governance issues often encompass the disparate fields of law, accounting, business, economics, finance, management, psychology and sociology. As a result, numerous understandings of corporate governance have been propounded to accommodate the diverse approaches to the topic.

Perhaps the most seminal definition of corporate governance is that advanced by the Cadbury Committee in 1992, which succinctly conceives of corporate governance as the system through which companies are controlled and directed.[199] The boards of directors are the fulcrum under this definition, as they bear responsibility for the governance and strategic operations of their companies, and are expected to provide the leadership and supervision required for their companies' successes.[200] The companies' shareholders also play essential roles in governance, through the appointment of directors and auditors in order to provide assurances that the appropriate governance mechanisms are instituted.[201] The topic of corporate governance according to this definition, has become an essential part of the operations of publicly traded companies.

Other definitions of corporate governance exist, such as that proffered by Margaret Blair, who described corporate governance as an assortment of cultural, institutional and, legal activities, which affect the control and returns of companies.[202] This definition acknowledges the existence of multiple external influences upon corporate governance, and in so doing, it hints at an underlying complexity in the way companies are, or ought to be governed. Other scholars define corporate governance in more streamlined terms. For instance, Shleifer and Vishny present corporate governance as a means through which investors ensure that they receive returns on their investments in companies.[203] This is similar to Sternberg's definition of corporate governance as 'ways of ensuring that corporate actions, assets and agents are directed to achieve the corporate objectives established by the corporation's shareholders.'[204]

From the foregoing definitions, it is possible to aggregate the common elements, such that corporate governance could be understood as a mechanism which establishes accountability and control in the corporate structure. However, this definition immediately raises questions about whose benefit and what

[199] Cadbury Committee, 'Report of the Committee on the Financial Aspects of Corporate Governance' (1992) 15
[200] ibid para 2.5.
[201] ibid.
[202] Margaret Blair, *Ownership and control: Rethinking corporate governance for the twenty-first century* (Brookings Institution 1995) 14.
[203] Andrei Shleifer and Robert Vishny, 'A survey of corporate governance' (1997) 52 The Journal of Finance 737.
[204] Elaine Sternberg, 'The defects of stakeholder theory' (1997) 5 Corporate Governance: An International Review 3.

purpose(s) the accountability and control of companies are being established for. These considerations have generated a vibrant debate about the corporate purpose, with the consequence being that supplementary definitions of corporate governance have come to outline whose benefits are, and ought to be considered in this mechanism. As gleaned from their above definitions, Shleifer, Vishny and Sternberg imply that corporate governance exists for the benefit of shareholders of companies, with profit maximisation as the companies' primary purpose.

Nonetheless, other scholars and groups advocate for more inclusive parameters in their definitions, specifically arguing that a company should also be accountable to stakeholders with whom long-standing relationships are in existence.[205] The Organisation for Economic Cooperation and Development (OECD) for instance defines corporate governance as a series of relationships involving a company's board, management, stakeholders and shareholders, as well as a structure within which company objectives are set and monitored.[206] Other contributors to the debate go even further to define corporate governance as a system of internal and external checks and balances, designed to ensure companies are socially responsible in the conduct of their activities, as well as to safeguard a company's responsibilities to all stakeholders. [207] This definition imposes broad parameters for corporate governance, and controversially eschews the prioritisation of shareholders' interests in favour of those of the general public.

In view of the differences seen in the above conceptions, the definition of corporate governance adopted by a particular jurisdiction, its regulators, and stakeholders, has significant implications for the perceived role of law and regulation in the governance of companies in that jurisdiction. Under the narrow conception, where a company is seen as primarily accountable to its shareholders, and possesses the purpose of profit maximisation, corporate governance could be seen as having only two primary actors: shareholders and corporate management. Within this perspective, extensive external regulation

[205] Steve Letza, Xiuping Sun and James Kirkbride, 'Shareholding versus Stakeholding: a critical review of corporate governance' (2004) 12 Corporate Governance: An International Review 242; Christine Mallin, *Corporate Governance.* (Oxford University Press 2010) 5.
[206] OECD, 'Principles of Corporate Governance' (2004) 11.
[207] Jill Solomon, *Corporate Governance and Accountability* (John Wiley & Sons 2007) 14.

is seen as superfluous because the shareholders possess disciplinary powers over management through the use of contractual obligations, internal monitoring mechanisms and the market for corporate control.[208]

On the other hand, the broader perspective which emphasises accountability to a wide group of stakeholders, would ordinarily welcome the intrusion of an external regulator into corporate governance, ostensibly to provide a framework which caters to the variety of interests in the management of companies' affairs. These tensions about the desirable or optimal degree of external regulatory intervention in corporate governance are at the heart of this thesis, and will therefore be explored later in this chapter. However, it is first necessary to discuss the various theories which underpin the differing conceptions of accountability and purpose of companies, in order to enrich the evaluation of optimal regulatory intervention.

Some of the dominant theories that feature in the field of corporate governance include the agency, institutional, managerial hegemony, institutional, resource dependency, stewardship, and stakeholder theories. Much like the definitions of corporate governance, the usage of these theories has been subject to significant debate within the literature. Nonetheless, these theories all focus on the same issues: what is the purpose of a company, and to whom is the company and its management accountable? The subsections which immediately follow contain a brief discussion of four of these theories that provide a suitable background to this research's objectives, namely: agency theory, stakeholder theory, stewardship theory, and institutional theory. The aim of these subsections is to set out an understanding of how these theories have historically influenced the literature, previous studies, and this present research on corporate governance regulation. The consideration of these theories is also consistent with prior research of relevance to this project.[209]

[208] Michael Hensen and Richard Ruback, 'The Market for Corporate Control: The Scientific Evidence' (1983) 11 Journal of Financial Economics 5; Gregg Jarrell and others, 'The Market for Corporate Control: The Empirical Evidence Since 1980' (1988) 2 Journal of Economic Perspectives 49; Paul Rose, 'Shareholder Proposals in the Market for Corporate Influence' (2014) 66 Florida Law Review 2179.
[209] Adegbite (n 3); Nakpodia (n 4); Galvin Nicholson and Geoffrey Kiel, 'A framework for diagnosing board effectiveness' (2004) 12 Corporate Governance: An International Review 442.

3.1.1. Agency Theory

Agency theory overwhelmingly dominates the existing literature on corporate governance, not least because it serves as the cornerstone of its regulatory framework in several jurisdictions.[210] The early foundations for agency theory were laid by Adam Smith in 1776, when he opined that corporate managers are unlikely to exercise as much diligence in their dealings with other peoples' (shareholders') money, as they would with theirs.[211] This supposition presented a clear problem of how to ensure that managers, who are the agents of their principals i.e. shareholders, remain diligent in the execution of their duties since their capital is not at stake. Berle and Means contributed further by highlighting how in the modern corporation, a wide dispersion of ownership structures exists within corporations, which therefore makes it challenging for shareholders to have significant degrees of control over the corporation's affairs.[212] In addition, where several individual shareholders own such minor percentages of the company, it is neither rational nor cost-effective for any one shareholder to devote time and incur costs on monitoring the company, as this would not only make the investment unprofitable, but would effectively provide a free benefit to other shareholders.[213] They described this phenomenon as the 'separation of ownership from control.'[214]

However, contemporary studies of agency theory are predominately influenced by Jensen and Meckling, who expanded on Smith and Berle and Means' works, as they detailed the agency conflicts that arise between the self-interest of company managers and the interests of their shareholders.[215] An agency relationship is created when the shareholders (principals) delegate to the management (agents) by contract, the authority to make decisions concerning the company's operations. The resulting agency costs are comprised of the aggregate of the costs of monitoring the managers, the costs of bonding the

[210] Chin Ong and Soo Hon Lee, 'Board functions and firm performance: A review and directions for future research' (2000) 3 Journal of Comparative International Management 18; Amy Hillman and Thomas Dalziel, 'Boards of directors and firm performance: integrating agency and resource dependence perspective' (2003) 28 Academy of Management Review 383.
[211] *Wealth of Nations* (Strahan and Cadell 1776) cited in Michael Jensen and William Meckling, 'Theory of the firm: managerial behaviour, agency costs and ownership structure' (1976) 3 Journal of Financial Economics 305.
[212] Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property* (Macmillan Publishing 1932).
[213] ibid; Shann Turnbull, 'Corporate governance: its scope, concerns and theories' (1997) 5 Corporate Governance: An International Review 188.
[214] ibid.
[215] Jensen and Meckling (n 211).

managers to shareholders (through contractual obligations for instance), and the residual losses that are incurred by the shareholders due to divergent interests with the managers, despite the monitoring and bonding provisions.[216]

The nature of the ownership of companies today further exacerbates the agency problem detailed by the above scholars. In Anglo countries (Australia, Canada, UK and US) where corporate governance receives significant attention, institutional investors such as investment trusts, pension funds, insurance companies, banks and mutual funds amongst others, own the vast majority of shares in the large public companies.[217] In 1994, institutional investors collectively represented about 57% of the ownership of the top US publicly traded companies, and in 2017, that figure stood at about 80%.[218] As these institutional investors are themselves agents who manage funds on behalf of a multitude of beneficial owners, the agency problem is enhanced as there are two degrees of separation from the first agent to the ultimate beneficial owner, and the institutional investors themselves invest in several companies at any given time.[219] The agency costs of supervision are therefore much more significant in value.

The agency theory is built on the core assumption that managers are self-interested, individualistic, and opportunistic in nature, and, therefore ought to be monitored, especially in the face of the existing dispersed ownership structure.[220] Since shareholders often play no direct role in the management of public companies, agency theory posits that managers being human, and possessing the above attributes, are likely to exploit opportunities to secure financial gain at the expense of the shareholders' interests.[221] Ong and Lee describe shareholders' primary interests as consisting of the maximisation of investment returns, receipt of dividend, and increase in the market value of their shares.[222] However, an increase in

[216] ibid.
[217] Oxford Analytica, *Board Directors and Corporate Governance: Trends in the G7 Countries Over the Next Ten Years – Executive Report* (Oxford Analytica Limited 1992) 13.
[218] Turnbull (n 213); James Hawley and Andrew Williams, *The Rise of Fiduciary Capitalism: How Institutional Investors Can Make Corporate America More Democratic* (University of Pennsylvania Press 2000) 136; Charles McGrath, '80% of equity market cap held by institutions' (*Pensions & Investments*, 25 April 2017) <https://bit.ly/2V6EGeV> accessed 3 April 2020.
[219] Turnbull (n 213).
[220] (n 210).
[221] Steve Letza, Xiuping Sun and James Kirkbride, 'Shareholding versus Stakeholding: a critical review of corporate governance' (2004) 12 Corporate Governance: An International Review 242.
[222] Ong and Lee (n 220).

the amount of profit declared and distributed to shareholders results in a reduction in the amount of capital available for managers to pursue empire-building strategies, increased executive compensation, and other serving goals, and herein lies one version of the agency conflict between managers and shareholders.

Another way of understanding the agency conflict is through the concept of the moral hazards which exist in the process of delegating duties to managers. The concept of moral hazards originates from economic and insurance literature, and is used to describe the behaviour that occurs when risky activities are insured.[223] The theorisation is that upon provision of insurance, the insured lacks an incentive to take care during the conduct of the activity, and may take greater risks than they would ordinarily take, because they possess the safety net of insurance.[224] This behaviour is therefore likely to result in greater losses than would occur where insurance cover is non-existent. In more general terms, a moral hazard today is enabled by information asymmetry, where one party to a risky enterprise possesses more information about the activity and its intentions, than the other party who bears the risk of the activity.[225] The asymmetry then provides an incentive for the first party to use the situation to act to its advantage, where the interests of both parties are not aligned. [226]

Agency theory argues that information-asymmetry and consequential moral hazards exist within corporate governance, and as such the primary goal of this theory in corporate governance regulation is to ensure the protection of the shareholders' interests.[227] Otherwise, since their capital is not at stake, managers may adopt highly risky strategies which may result in heavy losses for the company. This therefore jeopardises the shareholders' objective to acquire returns and increase the market value of their investments. The intuitive way of eliminating this agency problem and information-asymmetry

[223] David Rowell and Luke Connelly, 'A history of the term "moral hazard"' (2012) 79 The Journal of Risk and Insurance 1051.
[224] ibid.
[225] Bengt Holmstrom, 'Moral Hazard and Observability' (1979) 10 The Bell Journal of Economics 74.
[226] ibid.
[227] Michael Carney, Eric Gedajlovic and Sujit Sur, 'Corporate governance and stakeholder conflict' (2011) 15 Journal of Management and Governance 483.

would be to devote resources towards monitoring the actions of management, and dissemination of their knowledge.[228]

However, complete monitoring in this manner is usually either impossible, or in other situations, prohibitively costly to implement.[229] Using monitoring mechanisms to satisfy shareholders' interests in this regard is therefore likely to be imperfect. Nonetheless, the monitoring must be sufficiently effective to ensure that the managers' actions do not jeopardise the shareholders' objectives.[230] The central concern for agency theory in corporate governance is therefore to create rules, incentives and monitoring mechanisms which align the behaviour of company management with the interests and desires of shareholders.[231] The costs of these agency conflicts, managers' decisions and monitoring mechanisms are some of the most researched areas of corporate governance.[232]

Agency theory is used as the foundation for the Anglo countries' model of corporate governance, which has in turn inspired other regulatory models across the globe.[233] This model heeds agency theory's admonitions by recommending a number of checks and balances, which have become core elements of contemporary corporate governance practice. Some of these include: the creation of a board of directors largely comprised of non-executive directors to supervise the activities of the executive management; the appointment of board committees composed of independent non-executive directors to handle the nomination, remuneration and audit responsibilities of the board; and the frequent use of formal board evaluation procedures.[234]

Managerial ownership is another remedy to the agency problem, and it has gained traction over time. As advocated by Jensen and Mackling, granting ownership in the company to the managerial agents

[228] Holmstrom (n 225).
[229] ibid 75.
[230] ibid; Nicholson and Kiel (n 209).
[231] Turnbull (n 213).
[232] Charlie Weir, David Laing, and Phillip McKnight, 'Internal and external governance mechanisms: their impact on the performance of large UK public companies' (2002) 29 Journal of Business Finance & Accounting 579.
[233] Turnbull (n 213).
[234] Jay Lorsch and Elizabeth MacIver, *Pawns or Potentates: The Reality of America's Corporate Boards* (Harvard Business School Press 1989) 4; Ada Demb and Freidrich Neubauer, 'The Corporate Board: Confronting the Paradoxes' (1992) 25 Long Range Planning 9; FRC, 'UK Corporate governance code 2018' < https://bit.ly/2AKGqTm > accessed 28 January 2018.

aligns their interests with those of the shareholders, as the managers become incentivised to deliver enhanced returns.[235] Potential incidences of mismanagement and misappropriation therefore decline as the participation of the management in ownership increases, because the managers become more invested in receiving their share of the profit.[236] Indeed, a significant number of empirical research studies into the performance of Anglo-American firms find that managerial ownership mitigates the agency problem.[237]

Modern executive compensation is also commonly designed to align the interests of management and shareholders. Whereas managerial remuneration was previously focused on fixed payments, conditional stock options and grants have become ubiquitous components of remuneration today.[238] This means that managers are awarded a percentage of shares, the value of which is dependent on the company's performance.[239] Another common trend has been to tie executive remuneration to the performance of the company's share price, such that any rise or fall in the latter is reflected in the former.[240] This strategy is broadly encouraged by the provisions of codes of corporate governance, the UK's code for example states that: 'remuneration schemes should promote long-term shareholdings by executive directors that support alignment with long-term shareholder interests.'[241] Long-term shareholdings are targeted at ensuring the value delivered by management endures, in order to deter managerial decisions which are solely focused on delivering short term objectives, without due consideration for the company's future success.[242] Despite a number of recent examples of excessive compensation ensuing from these strategies, empirical research has generally suggested that these managerial ownership and

[235] Jensen and Meckling (n 211).
[236] ibid.
[237] Wallace Davidson, Amani Bouresli, and Manohar Singh, 'Agency costs, ownership structure and corporate governance in pre- and post-IPO firms.' (2006) 3 Corporate Ownership & Control 88; Phillip McKnight and Charlie Weir, 'Agency costs, corporate governance mechanisms and ownership structure in large UK publicly quoted companies: A panel data analysis.' (2009) 49 The Quarterly Review of Economics and Finance 139.
[238] Michael Kesner, Ed Sim, and Tara Tays, 'Trends in Executive Compensation' (2019) Harvard Law School Forum on Corporate Governance < https://bit.ly/2Vc0Ps6> accessed 3 April 2020.
[239] ibid.
[240] ibid.
[241] FRC, 'UK Corporate governance code 2018' para 36 < https://bit.ly/2AKGqTm > accessed 28 January 2018
[242] Kesner (n 238).

compensation plans correlate to increased financial returns for the shareholders, which ultimately fulfils the objective of agency theory in corporate governance.[243]

Managerial ownership and executive compensation are also complemented by the managerial labour market. Built upon the fact that there exists a demand from shareholders for efficient managers to run their companies, the belief is that this market motivates managers to demonstrate their abilities to observers, in order to create better opportunities for themselves.[244] This is because efficient managers are rewarded with significant compensation packages and enhanced market reputation, whereas inefficient managers are turned over, resulting in a dip in their reputation.[245] Accordingly, managers are motivated to maximise the desired objectives of their shareholders in order to signal their competence to the market.[246]

Agency theory is not without its critics, rather its core assumptions are often contested by scholars who conceive of corporate governance through the lens of other competing theories, as discussed in the subsections that follow. To summarise the criticisms, adherents of stewardship theory dispute agency theory's cynical assumptions of human behaviour, while stakeholder theorists also argue that agency theory ignores other important groups who are critical participants in the operations and successes of companies.[247] Jensen and Meckling and other commentators also criticise agency theory because it provides an unrealistic analysis of agents behaviour, which does not account for the complex range of motivations for their actions.[248] The limitations of this broad approach therefore limit the possibility of applying agency theory generally across different contexts.

[243] ibid; Robert Masson, 'Executive Motivations, Earnings, and Consequent Equity Performance' (1971) 79 Journal of Political Economics 1278; John Deckop, 'Determinants of Chief Executive Compensation' (1988) 41 Industrial and Labour Relations Review 224; Brian Hall, 'What You Need to Know About Stock Options' Harvard Business Review (2000) < https://bit.ly/3aRd6sJ> accessed 3 April 2020.
[244] Luc Renneboog and Grzegorz Trojanowski, 'The managerial labour market and the governance role of shareholder control structures in the UK' (2002) 68 Tilburg Centre for Economic Research 2.
[245] ibid.
[246] ibid.
[247] Turnbull (n 213).
[248] Jensen and Meckling (n 211).

In addition, institutional theorists argue that its failure to account for the impact of social and institutional contexts on the behaviour of principals and agents is a critical flaw.[249] Further, and particularly relevant for the context of this research, a number of researchers posit that the major assumption of agency theory, which is the separation of ownership and control, is not applicable in many emerging markets, where ownership is usually concentrated in a few dominant shareholders who either hold management positions themselves, or wield great influence over managerial appointments.[250] The corporate relationship which exists in the context of corporate governance is therefore principal-principal, not principal-agent, and as a result the proposed remedies of agency theory are not likely to succeed in emerging economies.[251] The consequences of this difference in the nature of the corporate conflict are discussed in the subsection on institutional theory below.

Further, although the remedies and resultant corporate governance mechanisms that agency theory recommends in mitigation of the agency conflict have found their way into the content of corporate governance codes, these solutions are largely contractual, and market-based in nature. The solutions are therefore internal, as they have been found within the corporate structure, and not externally imposed by regulators. This perhaps explains why the provisions of corporate governance codes are often flexible in nature, giving companies room to choose how they comply.[252] This analysis is however difficult to reconcile with the regulatory developments in Nigeria as introduced in Chapter 1, where compliance with provisions of the corporate governance code was made mandatory, with any deviations to be punished through fines and other sanctions. The suggestion is therefore that there are other factors in play, and agency theory alone might not suffice to either explain or proffer an understanding of this development.

[249] Gloria Cuevas-Rodríguez, Luis Gomez-Mejia and Robert Wiseman, 'Has Agency Theory Run its Course: Making the Theory more Flexible to Inform the Management of Reward Systems' (2012) 20 Corporate Governance: An International Review 526; Robert Wiseman, Gloria Cuevas-Rodriguez and Luis Gomez-Mejia, 'Toward a Social Theory of Agency' (2012) 49 Journal of Management Studies 202.
[250] Michael Young and others, 'Corporate governance in emerging economies: A review of the principal-principal perspective' (2008) 45 Journal of Management Studies 196.
[251] ibid.
[252] Paul Sanderson, David Seidl, and John Roberts, 'The limits of flexible regulation: managers' perceptions of corporate governance codes and comply-or-explain' (2013) University of Cambridge Centre for Business Research 439/2006, 5 < https://bit.ly/2UT0fR7> accessed 23 March 2020.

Nonetheless, agency theory remains highly relevant as it forms the essential basis of the corporate governance model spearheaded by the United Kingdom, a model which has been replicated in several other countries, including Nigeria. It is also a useful means of understanding the conflicts of interest and opportunism that can arise within the corporate structure, and the control mechanisms used to contain them. It is therefore the starting point for the consideration of corporate governance practice and regulatory reform in this research project.

3.1.2. Stewardship Theory

Stewardship theory is a concept that originates from management and organisational psychology studies, and is applied to generate an alternate understanding of the practical behaviour of corporate managers or directors.[253] Although agency theory has become the dominant concept which underpins the field of corporate governance, stewardship theory argues that its assumptions about individualism are not valid for all managers, and as such, it is unideal to wholly rely on agency theory as the foundation of corporate governance.[254]

Unlike agency theory which operates on the presumption that managers are self-serving, stewardship theory posits that managers are honest, and sufficiently motivated to cater to the collective interests involved in a company's business activities.[255] This is because they receive more utility or fulfilment from achieving collective goals, than from individualistic and self-serving goals.[256] Consequently, when presented with a choice between pursuing selfish behaviour and collective organisational targets, these stewards are predicted to align their interests with those of their organisation.[257] Thus, the manager steward values cooperation rather than self-interest, even where their interests diverge from those of the

[253] James Davis, David Schoorman and Lex Donaldson, 'Toward a Stewardship Theory of Management' (1997) Academy of Management Review 20; Morela Hernandez; 'Toward an Understanding of the Psychology of Stewardship' (2012) Academy of Management Review 172.
[254] Davis and others (n 253).
[255] Melinda Muth and Lex Donaldson, 'Stewardship theory and board structure: a contingency approach' (1998) 6 Corporate Governance: An International Review 5; Nicholson and Kiel (n 209).
[256] Davis and others (n 253) 25.
[257] ibid.

principal. Indeed, Hernandez defines stewardship in this context as the 'extent to which an individual willingly subjugates his or her personal interests to act in protection of others' long-term welfare.'[258]

Managers are therefore perceived as 'good stewards' of corporations, who work assiduously in order to optimise their productive output.[259] According to this theory, the structures of modern companies are more complex than portrayed by agency theory, and as a result, company managers are said to prioritise non-financial gains such as professional achievement, self-actualisation, and acknowledgement, above extrinsic rewards.[260] Stewardship theorists therefore assume that a strong relationship exists between the success of a company and the manager steward's satisfaction.

The value of stewardship theory is argued to be emphasised by the large heterogenous nature of companies. In such organisations which have several competing interests from shareholders and stakeholders, a steward is able to sift through the political environment because they are equipped with the right motivation to make decisions in the best interests of their companies.[261] This is because the manager stewards understand that they are likely to satisfy the competing interests in their companies by maximising the performance and wealth generated. [262]

In addition, Tricker and other stewardship theorists argue that their position is supported by the foundational principle of company law, which requires company management to discharge fiduciary responsibilities towards the shareholders.[263] Seeing as fiduciaries possess comprehensive powers which are almost akin to those of owners, the enshrinement of a fiduciary relationship therefore imputes an understanding that managers are trustworthy and can be effective stewards over companies, otherwise the legal position would be much different.[264]

[258] Hernandez (n 253) 174.
[259] ibid.
[260] Peter Burton, 'Antecedents and consequences of corporate governance structures' (2000) 8 Corporate Governance: An International Review 194.
[261] Davis and others (n 253) 25.
[262] ibid.
[263] Bob Tricker, *The Pocket Director* (Economist 1996) 29; Turnbull (n 213) 190.
[264] ibid.

As a result of these summations, proponents of this theory argue that excessive managerial monitoring may negatively affect the motivation and performance of managers.[265] Donaldson and Davis assert that these steward managers are motivated principally by their desire to achieve selected targets, and in view of their self-direction and motivation, corporations are likely to be better off if managers are unencumbered from constant oversight by boards of directors which are dominated by external non-executives.[266] They also argue that control mechanisms may lower the motivation of management, leading to a counterproductive impact on their desire for organisational behaviour.[267] Governance mechanisms therefore ought to be designed to establish structures that facilitate the efficiency of managerial actions, and not constrain them.

The consequence of these suppositions is that many of this theory's recommendations run contrary to those of agency theory. For instance, stewardship recommends that boards of directors should be comprised of insider executive directors, otherwise these boards should not exist at all, or they should be replaced by a committee of advisors.[268] In addition, the simultaneous appointment of an individual as both Chief Executive Officer and Chairperson, termed the 'CEO-Chair' or 'CEO duality', is encouraged.[269] These recommendations are advocated on the basis that they are likely to improve board cohesion, facilitate smooth decision making, and reduce the costs of governance.[270] The creation of the office of the CEO-Chair in particular ensures that there is one individual with the unambiguous responsibility for the direction of the company, and as such the steward in this position is able to focus on maximising the company's success, without distractions.[271]

However, the suppositions of stewardship theory have not gained substantial traction in the constitution of corporate governance frameworks, as agency theory's control mechanisms of boards of directors and

[265] Hernandez (n 253).
[266] Lex Donaldson and James Davis, 'Boards and Company Performance - Research Challenges the Conventional Wisdom' (1994) Corporate Governance: An International Review 151.
[267] ibid.
[268] ibid; Turnbull (n 213).
[269] Davis and others (n 253) 26.
[270] ibid.
[271] ibid.

financial incentives continue to dominate. The exception has been the element of CEO duality, which received significant adoption, particularly in the US where large companies have embraced CEO-Chairs.[272] This trend was bolstered by a number of empirical studies which found that boards of directors which are dominated by executives and which possess CEO-Chairs produce better returns for shareholders than the alternative.[273] Nonetheless, the empirical evidence is far from conclusive, as other researchers produce findings which suggest that agency theory's recommendation of independent board supervision correlates with improved corporate performance.[274] The issue is further complicated by yet other studies which find that there is no substantial difference between the shareholder returns produced by the executive and outsider-dominated boards recommended by stewardship theory and agency theory respectively.[275]

Even so, the phenomenon of CEO duality is dwindling, thereby further diminishing the impact of stewardship theory on governance structures. Whereas 80% of the largest US companies had CEO-Chairs in 1991, that figure had fallen to 45% by 2018.[276] This trend suggests that governance stakeholders are reluctant to adopt the almost blind faith in executive efficiency that this theory proclaims. For one, the task of identifying managers who exhibit such stewardship qualities is very cumbersome, and the risks of failure are so great to deter the adoption of this hypothesis.[277] There are also concerns that stewardship may encourage a paternalistic approach to corporate governance, wherein managers are automatically presumed to know what is best for the company, above and beyond the considerations of shareholders and other stakeholders.[278]

[272] Lex Donaldson and James Davis, 'Stewardship Theory or Agency Theory: CEO Governance and Shareholder Returns' (1991) Australian Journal of Management 149.
[273] ibid.
[274] Sanford Berg and Stanley Smith, 'CEO and board chairman: A quantitative study of dual vs. unitary board leadership' (1978) 3 Directors & Boards 34; Paula Rechner and Dan Dalton, 'CEO duality and organisational performance: A longitudinal analysis' (1991) 12 Strategic Management Journal 155; Catherine Daily and Dan Dalton, 'Bankruptcy and Corporate Governance: The Impact of Board Composition and Structure' (1994) 6 Academy of Management Journal 1603.
[275] Rajeswararao Chaganti, Vijay Mahajan and Subhash Sharma, 'Corporate board size, composition and corporate failures in the retailing industry' (1985) 22 Journal of Management Studies 400; Rick Molz, 'Managerial domination of boards of directors and financial performance' (1988) 3 Journal of Business Research 235.
[276] Donaldson and Davis (n 272) 61; Mengi Sun, 'More U.S. Companies Separating Chief Executive and Chairman Roles' (2019) Risk & Compliance Journal < https://on.wsj.com/2Xz8DXT> accessed 11 April 2020.
[277] ibid; Davis and others (n 253) 43.
[278] Davis and others (n 253) 25.

In addition, some researchers argue that stewardship theory's assumptions and recommendations are only practicable where the assumptions of agency theory are absent, for example where shareholder ownership is concentrated, and the major shareholders are represented in the company's managerial structure.[279] In such instances, the managers being direct representatives or being the majority shareholders themselves, are naturally more inclined to adopt a stewardship stance towards the operations of the company.

Further criticism is advanced on the basis that stewardship theory also provides an under-contextualised view of the manager-shareholder relationship. Instead of considering managers as either being absolutely selfish, or perfect stewards, institutional theorists argue that the inclination of managers to conform to either of the respective presumptions of stewardship and agency theories is contingent on the existing institutional context.[280] The consequence of this assertion is that either theory can be valid in different circumstances, and indeed the empirical evidence appears to support this conclusion.[281] Research also indicates that differences in the level of desire for approval, the individual culture, sense of responsibility to the larger community, and desire to collaborate with others, can influence the behaviour of managers and other individuals in this regard.[282] Therefore without a prior understanding of these influences, a corporate governance framework built upon stewardship is likely to possess significant weaknesses.

Despite its seeming rejection from contemporary governance structures, stewardship theory remains relevant because it suggests alternative motivations for competent managerial behaviour. While regulators around the world are clearly loathe to assume that managers are perfect stewards, this theory

[279] Theodore Eisenberg, Stefan Sundgren and Martin Wells, 'Larger board size and decreasing firm value in small firms' (1998) 48 Journal of Financial Economics 35; Morten Huse, 'Boards of Directors in SMEs: A Review and Research Agenda' (2000) 12 Entrepreneurship and Regional Development 271; Trevor Chin, Ed Vos and Quin Casey, 'Levels of Ownership Structure, Board Composition and Board Size Seem Unimportant in New Zealand' (2004) 2 Corporate Ownership and Control 119.
[280] Turnbull (n 213) 190; Alistair Bruce, Trevor Buck and Brian Main, 'Top Executive Remuneration: A View from Europe' (2005) 42 Journal of Management Studies 1493; Susan Shapiro, 'Agency Theory' (2005) 31 Annual Review of Sociology 263.
[281] (n 276); (n 277).
[282] Turnbull (n 213) 190.

gives rise to considerations about whether such stewardship motivations can be encouraged by regulation, and perhaps whether this outcome is what the Nigerian SEC sought to achieve when introducing a mandatory system of corporate governance regulation, as outlined in Chapter 1.

3.1.3. Stakeholder Theory

The stakeholder theory makes claims about what ought to be the corporate purpose, and these proclamations have implications for corporate governance structures. Stakeholder theory runs in direct opposition to the shareholder primacy values of agency theory, choosing instead to focus on the role and impact of companies within their societies.[283] In so doing, a company is seen as being comprised of implicit and explicit contracts drawn up with a wide range of stakeholders.[284] These stakeholders are broadly defined as all persons or groups who are affected by the company's activities, or who have legitimate interests in the company, and are classified into primary and secondary groups, with shareholders, employees, customers and suppliers seen as primary stakeholders.[285] Activists, local communities, non-governmental organisations, and governments, are classified as secondary stakeholders.[286]

In view of the multitude of stakeholders involved in corporate affairs, stakeholder theory argues that managers should account for the cumulative interests of stakeholders in the course of running their companies, as opposed to solely focusing on creating value for shareholders. This is justified on the assertion that stakeholders are critical to the determination of a company's success.[287] The purpose of the company in this light is therefore to create value for all of its stakeholders.[288]

[283] Charles Hill and Thomas Jones, 'Stakeholder-Agency Theory' (1992) 29 Journal of Management Studies 134.
[284] ibid.
[285] Max Clarkson, 'A Stakeholder Framework for Analysing and Evaluating Corporate Social Performance' (1995) 20 Academy of Management Review 92.
[286] ibid.
[287] Elaine Sternberg, 'The defects of stakeholder theory' (1997) 5 Corporate Governance: An International Review 3.
[288] Turnbull (n 213) 190.

Consequently, stakeholder theory makes a number of recommendations for corporate governance structures, the first of which concerns the board of directors. The board under this theory are given the enhanced responsibility to communicate and negotiate with all stakeholders in the interest of the corporation, such that the board is able to arrive at outcomes and strategies which achieve the best outcomes to the satisfaction of the competing groups.[289] Companies are therefore required to have strong communication channels and significant responsibilities to report developments to all stakeholders.[290]

In addition, in the process of achieving this theory's corporate purpose, the voice of all stakeholders needs to be enhanced, and as such advocates recommend the grant of ownership-like incentives to all key stakeholders, in order to align their interests with those of shareholders.[291] The practical recommendations here include granting long-term employees ownership stakes in the companies, and appointing directors who represent the interests of employees, key customers, suppliers and members of the community onto the board.[292] This would result in the presence of more non-executive board supervision of management, contrary to stewardship theory, and somewhat similar to, but an enhanced version of agency theory.

However, stakeholder theory has been subjected to heavy criticism, particularly from agency theorists, who argue that the definition of stakeholders is excessively ambiguous and broad, resulting in inevitable conflicts between the diverse range of ensuing interests. The numerous competing claims which arise from these divergent interests may not only derail optimal decision making, but may create avenues for managerial opportunism which exacerbate the agency costs, to the ultimate detriment of the integrity of

[289] Humphrey Hung, 'A typology of the theories of the roles of governing boards' (1998) 6 Corporate Governance: An International Review 101.
[290] ibid.
[291] Turnbull (n 213) 191; Michael Porter, 'Capital Choices: Changing the way America invests in industry' (1992) Journal of Applied Corporate Finance 4; Margaret Blair, *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century* (Brookings Institution 1995) 372.
[292] ibid.

corporate governance mechanisms.[293] In addition, they argue that a company which is accountable to several parties is ultimately not accountable to any single party, thereby undermining the notion of accountability which forms the basis of corporate governance.[294] This theory is also criticised for its impracticability, because it fails to outline realistic formulas and considerations that corporations should adopt in order to align the different stakeholder interests in the affairs of the company.[295] Stakeholder theory is further seen as undermining the property rights of shareholders, for the benefit of other stakeholders whose investments are not at stake.[296]

In spite of these criticisms, elements of stakeholder theory have gradually been integrated into corporate governance objectives across multiple jurisdictions, a phenomenon which scholars refer to as the convergence of shareholder and stakeholder discourse.[297] Stakeholder interests are protected in some countries, including the Germany, the Netherlands, Norway, and China through the creation of supervisory boards or councils that oversee and appoint the company's management, and grant approval to significant business activities.[298] These boards are usually comprised of employee representatives as well as shareholders in equal numbers, and as such the employees are given significant influence over the control of the company.[299]

Stakeholder values are now expressly included in codes of corporate governance and company law principles. In the USA, 35 states have passed statutes which expressly require boards of directors to consider the interests of all stakeholders when making decisions.[300] The stakeholders named include

[293] Michael Jensen, 'Value maximisation, stakeholder theory, and the corporate objective function' (2001) 7(3) European Financial Management 297.
[294] ibid.
[295] Sternberg (n 287).
[296] ibid.
[297] Katharine Jackson, 'Towards a Stakeholder-Shareholder Theory of Corporate Governance: A Comparative Analysis' (2011) 7 Hastings Business Law Journal 309.
[298] (n 291); Syste Douma, 'The two-tier system of corporate governance' (1997) 30 Long Range Planning 612; Manfred Gentz and others, 'The role and effectiveness of the Aufsichtsrat (Supervisory Board) and stakeholder inclusiveness' (2020) International Corporate Governance Network < https://bit.ly/2Veq1zn> accessed 15 April 2020.
[299] ibid.
[300] Woon Leung, Wei Song and Jie Chen, 'Does Bank Stakeholder Orientation Enhance Financial Stability? Evidence from a Natural Experiment' (2016) Journal of Corporate Finance 52.

employees, customers, suppliers, creditors, the state and national economy, the community and the rest of society.[301] Similarly, section 172 of the UK Companies Act 2006 requires directors to consider the interests of stakeholders in discharging their duty to promote the success of the company, albeit subject to the benefit of the shareholders as well. The UK's corporate governance code also recommends that directors describe in their annual report how the interests of the stakeholders under section 172 have been considered in their decision making.[302] The code also recommends that management should engage with their workforce through appointing a director from the workforce, establishing a formal advisory panel, or appointing a designated non-executive director to represent their interests.[303]

The rise of stakeholder concerns is particularly relevant in emerging markets where companies have outsized impacts on the society and economy, and as such great interest exists in the activities of this companies. This is reflected in the Nigerian SEC's mandatory code of corporate governance, which requires companies to consider the interests of stakeholders including employees, host communities, consumers and the general public.[304]

In such contexts, corporate malfeasance or failures could prove to be devastating on stakeholders whose livelihoods may be at risk, and this may explain why the SEC introduced mandatory regulation, with the threat of fines for non-compliance. This presumption receives some support from research conduct by Pfeffer, which found a correlation between the level of regulation in an industry, and the level of external stakeholder interests, such that the more sensitive an industry is, the more likely it is to find more external non-executive directors on the board in order to reassure regulators, creditors and other stakeholders about the safety of the companies in that industry.[305]

[301] ibid.
[302] FRC, 'UK Corporate governance code 2018' 5 < https://bit.ly/2AKGqTm > accessed 28 January 2018.
[303] ibid.
[304] SEC, 'Code of Corporate Governance for Public Companies' 14 <https://bit.ly/2XKarxs> accessed 28 December 2018.
[305] Jeffrey Pfeffer, 'Size and Composition of Corporate Boards of Directors: The Organization and its Environment' (1972) 17 Administrative Science Quarterly 218.

The precepts of stakeholder theory are therefore relevant to this thesis not only because they have been assimilated into contemporary corporate governance frameworks, but also because they offer a plausible explanation about regulatory motivations and decisions, which lie at the heart of this thesis's enquiry into the efficacy of mandatory corporate governance regulation in this context.

3.1.4. Institutional Theory

Institutional theory has increasingly become a significant theory applied in corporate governance discourse, often as a supplement to agency theory, and particularly in the context of emerging markets.[306] Institutional theory in corporate governance argues that the agency theory's assumption of the existence of a principal-agent conflict, which is amplified by the separation of ownership and control, does not apply in many emerging markets, thereby limiting its applicability in different national contexts.[307] Instead, corporate ownership in emerging markets is usually concentrated in the hands of a few dominant shareholders, who either hold management positions themselves, or significantly influence managerial appointments.[308] The nature of the corporate relationship of relevance to corporate governance is therefore about how the majority owners interact with the minority owners, described as a principal-principal relationship, and not the principal-agent relationship which describes the interaction between owners and managers under agency theory.[309] Consequently, the proposed remedies of agency theory which are intended to achieve better governance outcomes, are unlikely to succeed in emerging economies because the governance ailment is wholly different.

Institutional theory argues that corporate behaviour can be interpreted as a response to corporations' internal and external institutional environments. Institutions here are defined as a set of 'cognitive, normative and regulative structures and activities that provide stability and meaning to social behaviour' and are given their relevance by various vehicles including cultures, routines and structures which exist

[306] Nakpodia and Adegbite (n 8).
[307] Young and others (n 250).
[308] ibid.
[309] ibid.

at different levels in a jurisdiction.[310] In lay terms, this means organisations or structures that wield significant social influence, and which are able to either constrain or enable certain behaviour as a result of this influence.[311] Institutional theory examines the deeper and irrepressible facets of social structure, by considering the ways through which cultures, rules and routines morph into authoritative guidelines for social behaviour.[312]

According to this theory, because the structure and behaviour of companies as well as their stakeholders, are interconnected with social values, cultural, social, political, economic, and legal environments, corporate governance must reflect these wider institutional concerns too.[313] Therefore, its proponents argue that by applying this theory and recognising institutional influences on corporate governance, it would be possible to generate an understanding of why governance mechanisms appear to be more effective in some jurisdictions whilst being ineffective in others, and why some challenges to good governance are more prevalent in certain environments.[314] This has made institutional theory quite useful for the examination of corporate governance in emerging markets.

The starting point for this examination is the determination that the institutions which impact upon corporate actions in emerging markets are unstable, and as a result, organisations are more likely to be influenced by informal institutions.[315] For instance, emerging markets commonly lack a consistent and robust rule of law, which results in the existence of a weak regulatory environment in the context of governance.[316] This means that even though these countries possess corporate governance laws and frameworks which are usually transplanted from Anglo countries, the formal institutions required to make the application and enforcement of these frameworks successful, including adequate disclosure

[310] Richard Scott, *Institutions and Organizations* (Sage Publication 1995) 33.
[311] Douglas North, *Institutions, institutional change and economic performance* (CUP 1990).
[312] Richard Scott, 'Institutional theory' In George Ritzer (eds), *Encyclopedia of Social Theory* (Sage 2004) 408.
[313] Masahiko Aoki, *Information, corporate governance, and institutional diversity: Competitiveness in Japan, the USA, and the transnational economies* (OUP 2000) 9.
[314] Emmanuel Adegbite and Chizu Nakajima, 'Institutions and institutional maintenance: implications for understanding and theorizing corporate governance in developing economies' (2012) 42 International Studies of Management and Organization 69.
[315] Young and others (n 250) 198.
[316] Ravi Dharwadkar, Gerard George and Pamela Brandes, 'Privatization in Emerging Economies: An Agency Theory Perspective' (2000) 25 The Academy of Management Review 650; Todd Mitton, 'A cross-firm analysis of the impact of corporate governance on the East Asian financial crisis.' (2002) 64 Journal of Financial Economics 215.

obligations, accounting standards, and robust capital markets amongst others, are usually either non-existent or inefficient.[317] Consequently, informal institutions such as political contacts, concentrated ownership, family affiliations, business ties, and other relationships, play a greater role in influencing corporate governance.[318] While these informal governance structures may have their benefits, they create other novel problems to good corporate governance which in turn require novel solutions.[319]

One of the unique problems of governance in emerging markets is the conflict which occurs between majority and minority shareholders, who are both described as principals in governance parlance.[320] This is pertinent in these contexts because concentrated ownership and the ensuing conflict is evident in emerging markets, even in the largest public companies in these countries.[321] The redrawing of this conflict changes the dynamics of agency theory focused structure of corporate governance, as a new battle exists between the majority and the minority. Since the majority control managerial appointments, as well as appointment to the board of directors and the committees designed to oversee management, the governance control mechanisms of the board are effectively nullified as they only enact the wishes of the majority.[322] This therefore results in the legal or illegal expropriation of value from the company in favour of the majority shareholders and their allies, ultimately to the detriment of the minority shareholders. [323]

By way of examples, a high volume of related party transactions may be approved by the board with variations to the appropriate market price, non-merit based compensation may be awarded, unqualified individuals with affiliations to the majority shareholders may be appointed to key positions, and the company may adopt strategies which serve the interests or the personal agendas of the majority at the

[317] Mike Peng and Jessie Zhou, 'How Network Strategies and Institutional Transitions Evolve in Asia' (2005) 22 Asia Pacific Journal of Management 321; Young and others (n 250) 198.
[318] ibid; Mike Peng and Peggy Heath, 'The Growth of the Firm in Planned Economies in Transition: Institutions, Organizations, and Strategic Choice (1996) 21 The Academy of Management Review 492.
[319] Young and others (n 250) 199.
[320] ibid.
[321] Rafael La Porta, Florencio Lopez-De-Silanes, and Andrei Shleifer, 'Corporate Ownership Around the World' (2002) 54 The Journal of Finance 471.
[322] Young and others (n 250) 200.
[323] Mara Faccio, Larry Lang and Leslie Young, 'Dividends and Expropriation' (2001) 91 American Economic Review 54; Andrei Shleifer and Robert Vishny, 'A Survey of Corporate Governance' (1997) 52 The Journal of Finance 737.

expense of the company.[324] While minority shareholders in developed economies with strong institutions receive substantial protection from such abuses, similar protection in emerging markets may be absent or inefficient.[325] The governance dynamic is therefore markedly different from the Anglo model which inspires corporate governance mechanisms around the world.

Proponents of institutional theory argue that their perspective highlights how corporate governance mechanisms are bound to vary in degree of effectiveness in different countries, because of the variation of the institutions that exist in them.[326] This means that solutions which work in one jurisdiction may not necessarily work in another. Therefore, they assert that corporate governance problems in emerging markets require different solutions to those generated by agency theory, which fail to consider institutional contexts, and individual countries need to work their own unique solutions out.[327] Some of the solutions recommended include: a transplant of the stakeholder model discussed above, which will allow employees, creditors and other stakeholders to participate in the control and supervision of the company; and, the development of controlling coalitions which disperses ownership between the family or business blocs which dominate in a particular jurisdiction, such that no bloc alone has control.[328]

The viability of these solutions is capable of inspiring volumes of debate which extend beyond the current purpose, particularly regarding the complications from transplanting stakeholder culture, and attempting to manage various family and business interests in environments which possess weak institutions. Institutional theory may also be questioned on the basis that it lumps emerging economies together, and does not make distinctions between different institutions in different emerging countries or regions.[329] For example, the institutional influences in Kuwait may differ in nature and importance from those in Kenya. Further, this theory focuses on the impact of all kinds of institutions on corporate

[324] ibid.
[325] Young and others (n 250) 200.
[326] ibid.
[327] ibid 214.
[328] Shleifer and Vishny (n 323); Robert Chirinko and Julie Elston, 'Finance, control and profitability: the influence of German banks' (2006) 59 Journal of Economic Behaviour and Organization 69.
[329] Young and others (n 250) 214.

and human behaviour, which is complicated because it is often difficult to discern the effects of social institutions or motivations on social structures and behaviour.

Nonetheless, institutional theory is of significant relevant to this thesis because it highlights the differences in the structural integrity of key socio-legal institutions and ownership patterns between developed countries and emerging markets. These differences emphasise why each jurisdiction should develop governance frameworks which suit the local institutional contexts, and in so doing, is relevant to the examination of the introduction of mandatory corporate governance regulation in Nigeria. As gleaned from the context provided in Chapter 2, the corporate governance experience in Nigeria includes weak legal institutions, and conflicts similar to the principal-principal conflicts detailed by institutional theory, such that Nigerian regulators have introduced provisions in corporate governance codes which restrict the percentage and number of individuals of the same family or group who may participate in the ownership and control of companies. Institutional theory therefore offers an avenue to understand why and how the regulatory responses and corporate governance structure in this jurisdiction have come to be.

3.1.5. Summary

The review of theoretical perspectives in this section points to the dominance of agency theory and shareholder value in the literature, a dominance which is reflected in the prevalent Anglo conception of corporate governance. This model has inspired the key mechanisms of supervision and remuneration which are used to mitigate the governance challenges which exist. However, agency theory's limitations have been highlighted and enhanced through the contributions of the stewardship, stakeholder, and institutional theories to corporate governance theory. In addition, stakeholder values have increasingly become integrated within these models, pointing at some level of convergence in the structure of governance codes, laws and principles. Institutional theory in particular explains the diverse nature of institutions in different context, which may either facilitate the success of regulatory initiatives or constitute barriers to the implementation of good governance principles in these regions.

Altogether, these theories are relevant to this thesis, because they outline the conceptual foundations of corporate governance's development and evolution in different contexts, and they help to contextualise this thesis's enquiry into the efficacy of mandatory corporate governance regulation.

3.2. Corporate Governance Regulation

In subsection 3.1.1, corporate governance was described as a mechanism for the accountability and control of companies. Building on that foundation, corporate governance regulation is herein described as the vast body of laws, rules, regulations, standards or recommendations, that are designed to impact upon the direction, control, and accountability of companies within a defined market.[330] This definition not only includes companies' legislation and case law, but crucially also focuses on the non-statutory codes and standards issued by accounting bodies, designated corporate governance or prudential regulators, and stock exchanges.[331]

Perhaps the most critical issue in corporate governance regulation is one encountered early in the regulatory policy process, namely: what form should the operative element of regulation take? Regulation in this context can be seen as being bookended by two extremes, with no regulation at one end, and state regulation at the other end.[332] Between these two extremes, other forms of regulation exist, such as self-regulation, and co-regulation.[333] However, the possibility of no regulation is rejected because of the perceived significance of corporate governance.[334] Instead, this issue is usually presented as a binary choice between self-regulation, such as contemporary codes of corporate governance, and state-regulation, for example the US' Sarbanes-Oxley Act 2002, as the core element of the regulatory architecture.[335]

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[330] Alice Klettner, *Corporate Governance Regulation: The changing roles and responsibilities of boards of directors* (Routledge 2017) 8.
[331] ibid.
[332] Neil Gunningham and Joseph Rees, 'Industry Self-Regulation: An Institutional Perspective' (1997) 19 Law & Policy 363; Balazs Murakozy and Pal Valentiny, 'Alternatives to State Regulation: Self and Co-Regulation' (2015) Competition and Regulation 54.
[333] ibid.
[334] Ruth Aguilera and Alvaro Cuervo-Cazurra, 'Codes of Good Governance' (2009) 17 Corporate Governance: An International Review 376.
[335] ibid.

Self-regulation and state-regulation operate on contrasting philosophies, with the latter asserting that companies ought to be compelled to comply with governance standards, while the former asserts that companies ought to have the freedom to apply principles as they deem appropriate. This section discusses the debate between these two forms of regulation in the context of corporate governance, and considers the hybrid models which have emerged from this debate.

3.2.1. Self-Regulation

In the United Kingdom and other jurisdictions, including Australia, Canada amongst others, the core and operative element of corporate governance regulation is embodied in non-statutory codes of corporate governance or best practices, the violation of which results in no direct fine or sanction.[336] The argument in support of this form of regulation is based on the idea that good governance is a subjective status that is dependent on the unique circumstances of each company at a particular period, and does not have an abstract definition with universal applicability.[337] Accordingly, the appropriate form of regulation in this respect has to accommodate the individual circumstance of each company, as opposed to being universal. The regulator's task within this system is therefore to strike a balance between promoting good governance and maintaining flexibility.[338]

Codes of corporate governance have proven to be the most popular instrument adopted by regulators, and since the publication of the seminal report of the Cadbury Committee on the Financial Aspects of Corporate Governance in 1992, there has been a proliferation of these instruments across the globe. While 50 countries had introduced one or more codes in 2005, as of 2019, that number had risen to 120 countries, illustrating the ubiquitous nature of these codes.[339] This rapid adoption was significantly

[336] Marc Goergen, *International Corporate Governance* (Pearson 2012) 128.
[337] Sanjai Bhagat and Bernard Black, 'The Uncertain Relationship between Board Composition and Firm Performance' (1999) 54 The Business Lawyer 921; Marc Moore and Martin Petrin, *Corporate Governance: Law, Regulation and Theory* (Red Globe Press 2017) 58.
[338] Moore and Petrin (n 337).
[339] Ruth Aguilera and Alvaro Cuervo-Cazurra, 'Codes of good governance worldwide: what is the trigger?' (2004) 25(3) Organization Studies 415; ECGI 2019, 'Codes' <https://ecgi.global/content/codes > accessed 28 January 2019.

aided by the efforts of international organisations such as the World Bank and the OECD, in a concerted effort to drive global growth and development.[340]

Codes of corporate governance operate on a basis of self-regulation, most popularly known as the 'comply or explain' approach as advanced in the Cadbury Report.[341] Under this philosophy, companies are not required to comply with every recommendation contained within the code, however, they are required to explain reasons for non-compliance.[342] Further, the listing rules of stock exchanges usually require that companies state how they have applied the principles of the applicable codes of corporate governance in a given accounting period, in addition to a statement disclosing the company's degree of compliance with all provisions of the code, including reasons for any non-compliance.[343] Thus, corporate governance disclosure is not only a condition of listing, but legal sanctions can also be imposed for non-disclosure.[344]

While this form of regulation is commonly described as self-regulation, the involvement of the listing rules and authorities, who are in turn empowered by statutes, have led some commentators to describe this system as co-regulation, as they distinguish between voluntary self-regulation, and mandatory self-regulation.[345] In the literature, co-regulation is described as a system of regulation in which the state is involved in the regulatory process, usually to ratify the regulatory arrangements and to fulfil a public oversight function.[346]

It is said to be co-regulation because although companies are not forced to apply the provisions of corporate governance, the regulatory structure is such that they are required to consider the application

[340] Aguilera and Cuervo-Cazurra (n 339).
[341] Cadbury (n 199) para 3.7.
[342] ibid.
[343] ibid; FRC (n 302) 2; Financial Conduct Authority, 'Listing Rules' (2020) FCA Handbook Release 49 para 9.8.6; The Nigerian Stock Exchange, 'Rulebook of the Nigerian Stock Exchange' (2015) < https://bit.ly/2KpItij> accessed 28 February 2020.
[344] ibid.
[345] Gunningham and Rees (n 332).
[346] Michael Latzer and others, 'Regulation Remixed: Institutional Change through Self and Co-Regulation in the Mediamatics Sector' (2003) 50 Communications & Strategies 127.

of the provisions, and disclose how their governance practices are either consistent or divergent from these provisions.[347] However, other commentators describe this interplay of codes of corporate governance, listing rules, and statutory authorities as meta-regulation, where there are layers of regulatory strategies that influence each other.[348]

The use of different appellations demonstrates that the terminology of corporate governance regulation is in a developmental stage, which has led scholars to conclude that no single definition is satisfactory.[349] For the purpose of this thesis however, self-regulation is the chosen term, not only because it is most widely used in the literature, but also because it is adjudged to provide the simplest explanation of how corporate governance is applied at the company level of regulation, as companies choose how they interpret the recommendations of the codes. Essentially, under self-regulation, the system relies on the goodwill of companies to achieve substantive compliance, because companies retain this freedom of application.[350] Nonetheless, it is important to note that the participation of companies in this system is not wholly voluntary.

On the issue of the listing rules, the corporate governance disclosure obligations that they impose are intended to draw the attention of investors to the corporate governance practices of each company, so that they may make informed decisions about their investments.[351] In an ideal situation, serious deviations from the provisions of codes would be punished by a plunge in the company's share value, as investors sell their shares. This regulation by the market therefore saves public expenditure by the regulators, as they do not have to investigate and take up formal action against deviant companies.[352]

However, in practice, research indicates that explanations that companies offer in their disclosure of non-compliance tend to lack sufficient depth and detail to grant investors a sufficient understanding of

[347] (n 343).
[348] Christine Parker, *The Open Corporation Effective Self-Regulation and Democracy* (CUP 2002) 245; Klettner (n 330).
[349] Gunningham and Rees (n 332) 364; Latzer and others (n 346).
[350] Darren Sinclair, 'Self-Regulation Versus Command and Control? Beyond False Dichotomies' (2002) 19 Law & Policy 529.
[351] Carol Padgett, *Corporate Governance: theory and practice* (Palgrave Macmillan 2012) 137.
[352] ibid.

the companies' reasons, thereby suggesting that the objectives of this self-regulatory strategy may be frustrated.[353] In many cases, corporate boards adopt a perfunctory attitude in their reports on internal governance mechanisms, and also make use of boiler-plate statements and explanations, such that investors have no substantive information about the true governance picture of companies.[354]

However, codes of corporate governance remain highly influential regulatory devices in several jurisdictions, and with the proper design and functions, have been found to encourage compliance as effectively as statutory instruments.[355] Nonetheless, where the design and market pressures are found wanting, non-compliance with self-regulatory strategies become huge impediments to their effectiveness, as there are no guarantees that companies will adopt recommended practices. In such instances, these strategies give ground to the argument that more stringent, and perhaps mandatory rules are required to boost compliance, particularly in markets with underdeveloped governance structures and fragile institutions.[356]

3.2.2. State-Regulation

The major alternative to self-regulation as discussed above, is the state-regulation or mandatory approach, which implements governance standards through proscriptive corporate regulation, often by way of legislation.[357] As earlier stated, the USA's regulatory philosophy embodied in the enactment of the Sarbanes-Oxley Act 2002 and the Dodd-Frank Act 2010 is the most prominent example of this approach.

[353] Simon Lowe, 'Research Report: Corporate Governance Review 2018' (*Grant Thornton*, 19 October 2018) <https://bit.ly/2KtKPy7> accessed 29 March 2019.
[354] Moore and Petrin (n 337) 67.
[355] Lowe (n 346); Moore and Petrin (n 337); Financial Reporting Council, 'FRC reports on better compliance with UK Corporate Governance Code and need for improved adherence to the UK Stewardship Code' (*FRC News*, 15 January 2015) < https://bit.ly/2PlfsV6 > accessed 4 December 2018.
[356] Aguilera and Cuervo-Cazurra (n 339).
[357] ibid.

This approach is based on the philosophy that good governance practices have to be compelled, and cannot be left to the discretion of companies in a self-regulatory regime.[358] Therefore, the government intervenes in order to protect and build investor confidence, because there is no guarantee that companies will voluntarily choose to adopt recommended standards. The underlying assumption here is that the fear of penalties imposed for non-compliance will stimulate compliance with regulatory provisions, and such compliance will help to establish minimum governance standards which will in turn attract investment.[359] The ultimate objective of investment attraction is supported by La Porta's research, which found that countries with strong legal protections were likely to have buoyant markets as a result of this factor.[360] However, even under a mandatory system, compliance may not be guaranteed where penalties are of insufficient weight, especially for well-performing companies for whom the benefits of non-compliance outweigh the penalties to be imposed.[361]

Mandatory regimes, where properly implemented, also have the advantage of reducing the costs of information for investors by eliminating information asymmetries.[362] This is owing to the fact that investors are easily able to assess the strengths of a company's governance structure according to the established terms of reference or rules.[363] The cost of learning these rules is one-off, and is applicable to all companies within the jurisdiction, and therefore, the decision making with regards to potential investments is much smoother for investors. Conversely, under a system of self-regulation which does not possess a high saturation of governance standards, the cost of becoming an informed investor is significant.[364] This is because companies are free to establish their own governance practices, and an investor has to become familiar with these unique structures, which may not be directly comparable, and evaluate them on their own merits.[365]

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[358] Bernard Taylor, 'Corporate Governance: The Crisis, Investors' Losses and the Decline in Public Trust' (2003) 11 Corporate Governance 155; Iain MacNeil and Xiao Li, '"Comply or Explain": Market Discipline and Non-Compliance with the Combined Code' (2006) 14 Corporate Governance: An International Review 486.
[359] ibid.
[360] Raphael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, 'What Works in Securities Laws?' (2006) 61 Journal of Finance 1.
[361] Sinclair (n 350).
[362] Jeffrey Gordon, 'The Mandatory Structure of Corporate Law' (1989) 89 Columbia Law Review 1549.
[363] ibid.
[364] La Porta (n 360).
[365] ibid.

Whilst mandatory regimes reduce costs for investors, they are significantly expensive for the regulators and for companies.[366] The regulators incur heavy costs in designing, implementing, monitoring and enforcing the prescribed standards.[367] Enforcement is a particularly costly venture, as shown in the example of the USA where enforcement expenditure accounts for a third of the primary regulator's annual budget.[368] Another disadvantage is that heavy handed enforcement may be to the detriment of investors who lose investment value as a result of rules designed to protect them.[369] For instance, if a company is suspended from trading, investors lose the value of their investment in that company.

Regulated companies also incur significant costs in monitoring their own practices, creating new governance structures, producing reports, fees paid to professionals for compliance services, and costs of making required disclosures and statements.[370] A further challenge of mandatory regimes is their inflexibility, as the regulators adopt a one-size fits all strategy, determining the regulatory objectives as well as the means of achieving that objective.[371] As a result, companies and investors may avoid jurisdictions that have extensive and comparatively costly regulation. Hence, some research findings suggest that several companies voluntarily delisted from US stock exchanges as a result of stringent Sarbanes Oxley regulations.[372]

3.2.3. Conclusion

The decision about which regulatory strategy to adopt in corporate governance regulation is of great importance. This is because the implementation of the wrong strategy imposes dual penalties on companies, regulators and stakeholders, the first being wasted expenditure on unsuitable governance

[366] Anita Indira Anand, 'Voluntary Mandatory Corporate Governance: Towards an Optimal Regulatory Framework' (2004) Canadian Law and Economics Association 12.
[367] ibid.
[368] Charles River Associates, 'Securities Enforcement in Canada: The Effect of Multiple Regulators' (2003) Committee to Review the Structure of Securities Regulation in Canada: Research Studies 474.
[369] Anand (n 366).
[370] ibid.
[371] ibid.
[372] Goergen (n 336); Larry Ribstein, 'Cross-listing and Regulatory Competition' (2004) Review of Law and Economics 26.

mechanisms which contribute no value to the companies, and the second being the loss of effective governance mechanisms, which could have positively impacted upon the companies' structures and fortunes.[373] As stated above, this decision is usually framed as a choice within a continuum which ranges from no regulation at one end, to mandatory state regulation at the other. The increasingly popular position in corporate governance discourse in recent times is that adopting extreme positions on either side of this continuum is undesirable, with the partially mandatory regime of self-regulation, which offers voluntary adoption of governance standards but imposes mandatory disclosure, being proffered as the optimal solution.

However, as outlined in Chapters 1 and 2, the widely supported system of self-regulation was jettisoned by the Nigerian SEC and FRCN, because it was deemed to be an enabler of poor corporate governance practices. Instead, the SEC introduced mandatory corporate governance regulation in order to strengthen the state of governance. At the heart of this research project is an enquiry into the efficacy of this change in regulatory policy. In order to satisfy this enquiry, a prior understanding of the ideal relationship between a regulator and the regulated is necessary, because the nature of this relationship can either make or break the success of any regulatory strategy. The discussion in the next section addresses this consideration, and presents the theory of responsive regulation, which provides the primary framework for this thesis.

3.3. Core Theory: Responsive Regulation

The purpose of this research project is to consider the effectiveness of the corporate governance regulatory strategy introduced by the Nigerian regulators. In doing so, there is an acknowledgement that effective implementation, compliance and enforcement are of critical importance to the success of the policy goals of any regulatory strategy, and as such it is necessary to put forward a theory about how this task might be best achieved. The discussion in the preceding subsection concluded that the modern system of self-regulation, which is in effect a blend of mandatory and voluntary systems, is

[373] Moore and Petrin (n 337) 59.

most widely accepted in the literature as best suited to current regulatory objectives. Thus, the literature implicitly posits that stand-alone regulatory approaches are insufficiently robust to tackle the challenge of ineffective regulation, and suggests a preference for hybrid solutions. The examination in this section builds upon this supposition by expanding upon hybrid regulatory approaches, as documented in the theory of responsive regulation.

3.3.1. Deterrence versus Persuasion

The theory of responsive regulation encourages the combination of deterrence and persuasion within the same regulatory framework, and for this reason it is first necessary to explain what constitutes deterrence and persuasion for the purpose of this theory.[374] The strategies of state-regulation and self-regulation outlined in section 3.2 fall within the scope of deterrence and persuasion respectively.

Deterrence is described as an adversarial strategy which deploys sanctions to punish non-compliant actions.[375] This strategy is based on the belief that persons under regulation are rational, and being of this nature, will be deterred from deviating from the rules if their violations are frequently detected, and adequately punished.[376] The state-regulation deployed by corporate governance regulators in subsection 3.2.2. is a manifestation of the deterrence strategy. On the other hand, the persuasion strategy lays emphasis on cooperation and conciliation, and eschews confrontation.[377] This strategy seeks to achieve broad aims and principles, and uses bargaining and negotiation tactics with regulated actors in order to achieve this outcome.[378] However, the threat of strict enforcement remains in the background in these negotiations.[379] The self-regulation strategy deployed in corporate governance outlined in subsection 3.2.1 is likewise an offshoot of this strategy. The extreme polarisations which exist between these two

[374] Neil Gunningham, 'Enforcement and Compliance Strategies' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (OUP 2010) 120.
[375] ibid 121.
[376] ibid.
[377] Bridget Hutter, 'Regulating Employers and Employees: Health and Safety in the Workplace' (1993) 20 Journal of Law and Society 452.
[378] Gunningham (n 374) 121.
[379] ibid.

strategies have given rise to a substantial number of studies in the literature that consider which of these strategies achieves the better results.

Deterrence theorists assume that regulatees (the regulated companies) will only align themselves with the policy objectives of the regulator when the law explicitly demands their compliance, and when they are convinced that non-compliance will be swiftly detected and heavily punished.[380] Deterrence here is commonly described as either general, or specific.[381] General deterrence describes a situation where the imposition of sanctions on one regulatee deters other regulatees from breaching rules, while specific deterrence refers to the presumption that a regulatee that has been previously sanctioned will be deterred from further violations.[382]

With regards to general deterrence, a study of the regulation of heavily regulated industries by Thornton, Gunningham, and Kagan, found that huge penalties helped to induce compliance, either because companies believed they had no alternative as resistance to regulation was bound to prove foolhardy, or because they wanted to avoid the social stigma of being subjected to prosecution.[383] In addition, a significant number of these regulatees stated that without regulation (i.e. the threat of punishment), it was unlikely that they would continue to comply voluntarily, not only because they would lose their motivation, but also to prevent their competitors from gaining an advantage over them through non-compliant behaviour.[384]

Accordingly, this study found that regulatees were often prompted to review and strengthen their compliance policies upon discovering that other regulatees had been sanctioned.[385] Therefore, in heavily

[380] Gary Becker, 'Crime and Punishment: an Economic Approach' (1968) 76 Journal of Political Economy 169; Robert Kagan and John Scholz, 'The Criminology of the Corporation and Regulatory Enforcement Strategies', in Keith Hawkins and John Thomas (eds), *Enforcing Regulation* (Kluwer-Nijhoff 1984).
[381] Gunningham (n 374) 122.
[382] ibid.
[383] Dorothy Thornton, Neil Gunningham and Robert Kagan, 'General Deterrence and Corporate Behaviour' (2005) 27 Law and Policy 262.
[384] ibid.
[385] ibid.

regulated industries, general deterrence appears to have some effect, although a part of it is based on regulatees being reassured that none of their competitors can get away with flouting their rules.[386]

The evidence in the literature concerning specific deterrence is perhaps even stronger, as a number of studies have found that the future attitude of a regulatee to compliance is positively influenced by the imposition of a penalty for non-compliance in the past. A study conducted by Baldwin and Anderson for instance, found that over 70% of companies which had been sanctioned in the past stated that the experience forced them to overhaul their attitudes to compliance.[387] However, another study found that other regulatory interventions which fall short of sanctions, such as inspections, warnings and notices, can also induce a similar reaction, perhaps because they focus their attention on issues that were previously ignored.[388]

Nonetheless, the positive effects of the deterrence strategy can be compromised if this strategy is indiscriminately utilised. For example, regular inspections or warnings without taking further action may negatively affect compliance behaviour, as regulatees believe there are no real consequences.[389] Furthermore, regulatees may develop a general culture of resistance to regulation, which results in their decision to restrict themselves to complying only to the bare minimum of regulations, doing just enough to avoid regulatory action.[390] This outcome is likely to vitiate the broader regulatory objectives, and is theorised to occur where regulatees believe that regulation is either unnecessary, or that the regulators have been excessively punitive in the face of their good faith.[391]

[386] Gunningham (n 374) 122.
[387] Robert Baldwin and Richard Anderson, *Rethinking Regulatory Risk* (CUP 2002) 10.
[388] James Baggs, Barbara Silverstein and Michael Foley, 'Workplace Health and Safety Regulations: Impact of Enforcement and Consultation on Workers' Compensation Claims Rates in Washington State' (2003) 43 American Journal of Industrial Medicine 483.
[389] Sidney Shapiro and Randy Rabinowitz, 'Punishment versus Cooperation in Regulatory Enforcement: A Case Study of OSHA' (1997) 14 Administrative Law Review 713.
[390] Eugene Bardach and Robert Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (Temple University Press 2002) 15.
[391] ibid.

Consequently, in its pure form, the deterrence strategy is unlikely to succeed where the regulatees respond negatively to its adversarial approach. The main dilemma for regulators is therefore the question of how to unlock the benefits of deterrence without its negative impacts, a dilemma which will be explored in the subsection to follow.

A strategy of persuasion on the other hand, often encourages regulatees to go beyond the bare minimum in their compliance obligations, as it motivates them to embrace the principles and desired policy outcomes of regulation.[392] However, this strategy runs the significant risk of become a lax regime that encourages no compliance since there are no consequences for deviant actors.[393] This is exacerbated by the fact that those regulatees who desire to comply extensively, may be concerned that such voluntary compliance is likely to put them at a competitive disadvantage with their competitors who get away with non-compliance.[394] This, according to Gunningham, becomes a system of 'negotiated non-compliance', which is 'a complete withdrawal from enforcement activity, a toothless, passive acquiescent approach … which has tragic consequences for those whom the legislation is ostensibly intended to protect.'[395] The dilemma for regulators referred to above is therefore also existent under this strategy, as they ponder the question of obtaining its benefits without the drawbacks.

Consequently, the limitations of both the deterrence and persuasion strategies have driven regulatory theorists to argue that a hybrid of both strategies is most likely to achieve the optimal outcome.[396] The consideration is therefore how to achieve the right mixture of both strategies which achieves the desirable outcome, which is what responsive regulation seeks to address.

[392] Gunningham (n 374) 122.
[393] ibid.
[394] Shapiro and Rabinowitz (n 389).
[395] Neil Gunningham, 'Negotiated Non-Compliance: A Case Study of Regulatory Failure' (1987) 9 Law and Policy 69, 91.
[396] Gunningham (n 374) 125; Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (OUP 1992); Robert Kagan, 'Regulatory Enforcement', in David Rosenbloom and Richard Schwartz (eds), *Handbook of Regulation and Administrative Law* (Dekker 1994).

3.3.2. Responsive Regulation

As stated above, responsive regulation puts forward a theory about how regulators may combine both deterrence and persuasion as strategies to extract substantive compliance from regulatees. This combination must be one which deters deviant regulatees, while simultaneously encouraging other regulatees to go beyond mere compliance to embrace the policy principles of regulation.

The fundamental purpose of responsive regulation, as espoused by Ian Ayres and John Braithwaite, is 'to establish a synergy between punishment and persuasion.'[397] This is founded upon the belief that compliance with regulations will be achieved if a regulator applies a range of explicit sanctions in the form of a pyramid, beginning from advice and persuasion at its base, through to warnings, civil penalties at the intermediate level, and suspensions, licence revocations, and other punitive sanctions at the top, such that each succeeding level of enforcement increases in severity and is more punitive than the last, as demonstrated in Figure 3.1 below.[398]

In implementing this strategy, there is a presumption that regulation should always begin from the base of the pyramid i.e. the least intrusive and punitive form of regulation should be adopted first, with the belief that the regulatees are willing to comply with the rules voluntarily.[399] Only when this presumption is observed to be false, leading to the failure of the non-punitive regulations, should the escalation to more punitive or deterrent strategies take place.[400] Therefore, in this manner, the regulators are able to discover the motivations of the regulatees, and respond accordingly.

[397] Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (OUP 1992) 25.
[398] ibid 35.
[399] ibid.
[400] ibid.

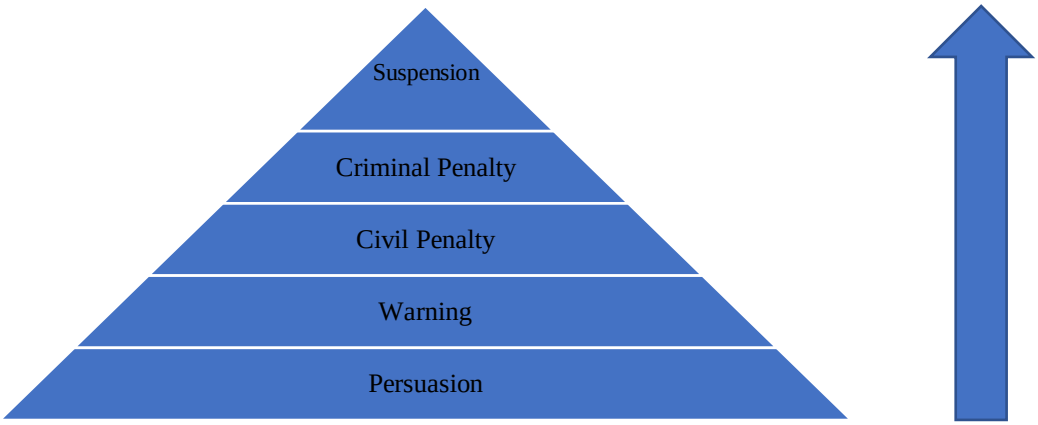

Figure 3.1*: Pyramid of Regulation (Source: Ayres and Braithwaite n 397)*

According to Ayres and Braithwaite, when the regulation of an entire industry is under consideration, the pyramidal model can be adapted to begin with self-regulation at the bottom of the pyramid, escalating to enforced-self regulation, command regulation with discretionary punishment, and command regulation with non-discretionary punishment, as demonstrated in Figure 3.2 below.[401] Essentially, the regulator analyses how effectively the regulated are regulating themselves ahead of a decision to introduce more stringent regulation.[402]

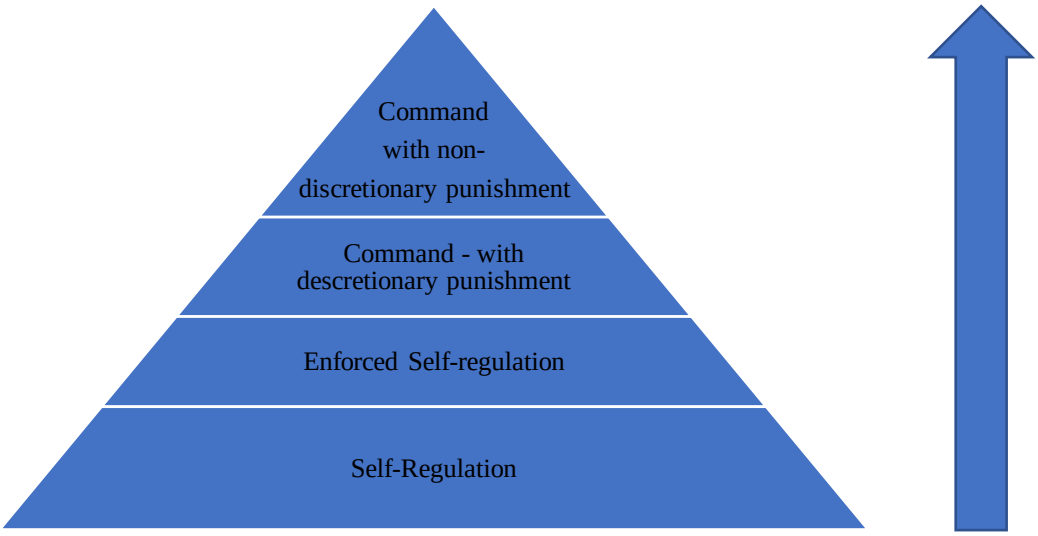

Figure 3.2: *Industrial Pyramid of Regulation (Source: Ayres and Braithwaite n 397)*

[401] ibid 39.
[402] John Braithwaite, 'Types of responsiveness' in Peter Drahos (eds), *Regulatory Theory: Foundations and Applications* (ANU Press 2017) 117.

Self-regulation is solely based on persuading the regulatees to embrace the principles of regulation wholeheartedly,[403] while enforced self-regulation is akin to the system of self-regulation in corporate governance described in section 3.2.1, where disclosure obligations are attached. Command regulation with discretionary punishment entails a level where the regulator is able to choose which punishment is best suited to encourage compliance, for example, fines and temporary suspensions.[404]

Command regulation with non-discretionary punishment is described by Ayres and Braithwaite as the ultimate level where the regulator burns its bridges with the regulatee(s), with the objective of demonstrating its intention to remain unrelenting in the pursuit of substantive compliance.[405] This could entail powers to shut down or take over the regulatee's business down completely, permanently revoke licences, or bar access to the market for its goods and services.[406] The idea is such that the greater the level of punishment that a regulator can escalate to on the pyramid, the greater its ability to regulate at a persuasive level of the pyramid, as the threat of the ultimate punishment hovers.

Therefore, the success of this model of regulation depends both on the ability to gradually escalate through the pyramid, and a strong peak capable of deterring even the worst offenders. The ability to escalate helps to create a tit-for-tat strategy, where the regulator treats the regulatee with respect and trust in reward for good behaviour, while the strong peak ensures that virtuous regulatees are not placed at a competitive disadvantage, in addition to its deterrent value.[407]

However, there are some challenges to the application of this model which have to be considered for its success. In the first instance, critics argue that depending on the particular circumstances, the immediate escalation to more-punitive levels of the pyramid is not always appropriate.[408] It may be more

[403] ibid.
[404] Ayres and Braithwaite (n 397) 38.
[405] ibid.
[406] ibid 40.
[407] ibid.
[408] Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (OUP 2011) 261.

appropriate to consider whether the first levels of advice and persuasion have been appropriately administered. Second, the fundamental presumption that the regulated will react positively to the escalating regulatory strategy is challenged, based on the argument that corporate behaviour is more likely to be influenced by the collective cultural behaviour in a particular industry and forces of competition.[409] As such, focusing on escalating regulatory strategies may amount to be a wasteful exercise.[410] Instead, some authors argue that the motivations of deviant regulated firms should be first understood before any regulatory strategy is affected, in order to tailor the strategy accordingly.[411]

For instance, if it is understood that there is a pervasive disregard for rules in a particular industry, it would be futile to begin with the persuasive or self-regulatory base of the pyramid. Rather, intervention should occur from a higher level of the pyramid. Further, some industry associations have large presences and wield significant influence over individual members.[412] In such circumstances, it would be prudent to first engage with such associations, public interest groups and political leaders, in order to encourage a positive regulatory culture from the regulatees.

In addition, there is a possibility that escalation to penalties may damage the relationship between the regulatee and regulator, such that mistrust exists, and organisations do not readily cooperate with regulators, thereby adding more complexity to the regulator's task.[413] There is also a concern that this system will fail if the regulatees do not understand the objective of the regulators.[414] Therefore, there needs to be seamless communication between both parties to ensure that the signals or threats of higher regulatory enforcement are picked up by regulatees.[415] Parker argues that this can be achieved through intermediaries such as compliance professionals in organisations, who are solely dedicated to

[409] ibid.
[410] ibid.
[411] ibid; Kagan and Scholz (n 380); Robert Baldwin, 'Why Rules Don't Work' (1990) 53 Modern Law Review 321.
[412] Ayres and Braithwaite (n 397) 42.
[413] Fiona Haines, *Corporate Regulation: Beyond 'Punish or Persuade* (Clarendon Press 1997) 119, 220.
[414] Christine Parker, 'Compliance Professionalism and Regulatory Community: The Australian Trade Practices Regime' (1999) 26 Journal of Law and Society 215.
[415] ibid.

maintaining the trust between both parties by harmonising their respective objectives, and are able to alert the senior leadership of organisations about impending escalations.[416]

Black also argues that responsive regulation may be unworkable in polycentric regulatory regimes, where the roles of regulation are shared between a number of different regulators with overlapping jurisdictions.[417] Other scholars add that in reality, the regulatory regimes in place are likely to be highly complex, often involving multiple regulators and other third parties.[418] Therefore, responsive regulation as a theory is likely to be ineffective as the presence of multiple actors creates interference and sows confusion amongst the regulated entities.[419] This is likely to occur where the regulated entities are confused as to which regulator or influential party's rules are to be adhered to with regards to a particular issue. The ability to keep all of these regulators on the same page, thereby eliminating the conflict, is essential to the success of this strategy.

Another challenge with responsive regulation is that it may not always be possible for the regulator to escalate to more intensive enforcement strategies. A regulator's escalatory ability is limited by other factors such as the extent of its resources, the size of the regulated class under its purview, the ability to detect non-compliance, the expense incurred to implement regulations, and the limitations imposed by the culture and institutional environment.[420] For instance, the regulator may lack the political, judicial, and public support to escalate to more punitive strategies and, as a result, the regulator may refuse to risk the backlash that may occur if such escalatory tactics are utilised. Alternatively, severe political or media pressures may motivate the regulator to enhance punitive strategies immediately without prior engagement.

[416] ibid.
[417] Julia Black, 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' (2008) 2 Regulation & Governance 137.
[418] Parker (n 414); Baldwin (n 408) 261.
[419] Baldwin (n 408) 261.
[420] ibid 263.

In addition, the practical application of responsive regulation can be frustrated by legal challenges through conflict with existing legislation. For example, some legislation may already prescribe specific punishment for particular offences, therefore limiting the ability of the regulator to apply responsive strategies.[421] Further, responsive regulation presumes that the regulator possesses a variety of powers and tools to facilitate the escalation through the pyramid of strategies.[422] However, in some instances, there may be no legislation which grants the legislator such sweeping powers. Regulators may therefore have to rely upon judicial enforcement through the exercise of their prosecutorial powers and, in this regard, they are placed at the mercy of the efficiency of the existing court system.

One further concern is that the system of responsive regulation grants a great deal of discretion to the regulator, which may be abused and exercised in a non-transparent manner.[423] There may also be concerns that this discretion is applied inconsistently to different regulated entities, for instance some entities may receive lighter treatment while others are more heavily punished.[424] In addition, there is a risk that the close relationships between the regulator and regulated that responsive regulation requires may result in regulatory capture i.e. regulators may become susceptible to pressure and lobbying from companies and other constituents, through materialistic and non-materialistic means, and as a result, they may engage in rent-seeking behaviours.[425] Preferential treatment may also be created by the existence of a revolving-door dynamic, where personnel frequently change roles as regulators and members of the industry, resulting in benefits for the regulatees which have a high level of interchange.[426]

[421] ibid 264; Jan Freigang, 'Is Responsive Regulation Compatible with the Rule of Law?' (2002) 8 European Public Law 463.
[422] ibid.
[423] Baldwin (n 408) 262.
[424] ibid.
[425] ibid, George Stigler, 'The theory of economic regulation' (1971) 2 The Bell Journal of Economics and Management Science 3; Paul Mahoney, 'The origins of the Blue-Sky Laws: a test of competing hypotheses' (2001) 46 Journal of Law and Economics 229.
[426] Jordi Vidal, Mirko Draca and Christian Fons-Rosen, 'Revolving Door Lobbyists' (2012) 102 The American Economic Review 3731.

Finally, there is the argument that most industries do not commonly witness regular interactions between the regulator and regulatee, the likes of which are crucial for the workability of this strategy.[427] Gunningham, and Johnstone argue that regulators in this system need to identify the nature of the regulatee, and have a complex understanding of the context within which the regulatee operates, in order to glean their motivations and unique circumstances which may affect how they respond to regulatory action.[428] This will require the commitment of a vast amount of resources, and regular inspections and other interactions in other to gain the required knowledge about the regulatee and its industry.

The aggregation of the above concerns about responsive regulation has led to the emergence of the following offshoot theories which aim to address the noted deficiencies: smart regulation, meta-regulation and really responsive regulation.

3.3.2.1. Smart Regulation

Smart regulation addresses the criticism that responsive regulation only envisages the presence of two parties in regulation: the regulator and the regulatee. Gunningham and Grabosky argue that in the pyramidal process of regulation, regulation can be conducted by other parties, including the regulated entities through self-regulation, professional bodies, industry associations, commercial institutions, and other quasi-regulators.[429] These third parties may apply other pressures such as guidance, training, advice, incentives, promotion, and censure.[430] Their argument is that the use of these multiple bodies is likely to produce more efficient regulation in most circumstances. Therefore, the government does not have to be the sole regulator, however it remains the primary regulatory institution. Smart regulation in essence proposes the escalation of regulatory strategies across various vehicles or bodies, and not the

[427] Neil Gunningham and Richard Johnstone, *Regulating Workplace Safety* (OUP 1999) 123.
[428] ibid.
[429] Neil Gunningham and Peter Grabosky, *Smart Regulation – Designing Environmental Policy* (Clarendon Press Oxford 1998) 399.
[430] ibid.

single pyramid of the regulator. This approach is expected to reduce the expenditure of the regulators, and grants the third parties and the wider community a sense of ownership over regulatory issues.[431]

As a result, in a practical situation, it should be possible to react to non-compliance with regulations by moving from one pyramid to another, instead of simply escalating regulatory responses.[432] For example, if the persuasion of the regulator does not have the desired effect, the provision of training and supervision by the professional bodies and other third parties may be implemented, ahead of more punitive regulatory regimes. This attribute introduces a great deal of flexibility to the regulatory system, and allows for a creative mix of instruments which may be more influential on the behaviour of regulated entities.[433] Another example of this can be found in environmental regulation, where the combination of mandatory disclosure obligations and pressure from these quasi-regulators exist.[434] Here, the mandatory disclosure obligations reveal crucial information about environmental activity, and the quasi-regulators such as the stock market, commercial institutions including insurers, and environmental activists use the information disclosure to pressure regulatees to improve their compliance behaviour.[435]

However, one major stumbling block to the operation of this multifaceted strategy is the challenge of coordinating regulation through multiple parties.[436] Conflicts, lack of clarity, resource and time limitations, and political opposition could scupper the effectiveness of smart regulation.[437] Another limitation is that this model may lack the ability to escalate to more severe measures.[438] Using the example of environmental disclosure above, where such action from quasi-regulators fail to improve regulatee behaviour, there are no alternatives for them to escalate to. Gunningham therefore argues that in order for this strategy to work, the government will have to be capable of filling the gaps that exist

[431] Gunningham (n 374) 125.
[432] ibid.
[433] Gunningham and Grabosky (n 429) 403.
[434] ibid.
[435] ibid.
[436] John Braithwaite, *Responsive Regulation and Restorative Justice* (OUP 2002) 230.
[437] ibid.
[438] ibid.

in the enforcement pyramid, to account for the limitations of third party or quasi-regulators inability to escalate.[439]

3.3.2.2. Really Responsive Regulation

Similar to smart regulation, really responsive regulation builds upon responsive regulation by proposing an expanded framework which encompasses a number of the issues ignored by responsive regulation.[440] This theory asserts that regulators need to adapt their strategies to the behaviour of the regulated. This is to be done through: considering the institutional influences present in the regulatory regime; paying attention to the behaviour, culture and attitudes of the regulated; considering the relationship between different regulatory strategies; analysing the performance of the current regulatory regime; and monitoring the changes in each of the other factors.[441] Proponents of this theory assert that the consideration of these five factors covers the key difficulties that regulators encounter and must resolve if their objectives are to be achieved.[442]

In sequence, consideration of the institutional influences requires the regulation to take cognisance of the cognitive, normative, and resource allocation structures in the regime.[443] A consideration of behaviours and culture requires attention to key factors that influence the reaction of firms to regulation. For instance, they may have a particular attitude towards regulation which affects their compliance culture, they may possess a strong market presence, or have dominant power structures.[444] Additional issues for consideration include the nature of the relationship between the regulator and the management and executive of firms, whether these relationships are positive or antagonistic, and whether the management consider the regulatory regime to be fair or otherwise.[445] All of these factors have to be

[439] Gunningham and Grabosky (n 429) 403.
[440] Baldwin (n 408) 277.
[441] Robert Baldwin and Julia Black, 'Really Responsive Regulation' (2008) 71 Modern Law Review 60.
[442] ibid.
[443] ibid.
[444] ibid.
[445] Lars Feld and Bruno Frey, 'Tax Compliance as the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Regulation' (2007) 29 Law and Policy 102.

responded to by the regulator because they impact upon the regulator's ability to influence the behaviour of the regulated entities.[446]

Analysis of the regulatory regime's performance is also of great importance, as it is a useful metric of assessing whether the current strategies are achieving the stated regulatory objectives. This would involve assessing compliance with the rules, modifying the regulatory regime accordingly to improve the ability to detect non-compliance and enforce rules.[447] Ultimately, without this analysis, regulators would never know whether their policies are successful, and if they cannot modify and adapt their operations and strategies in the light of performance assessments, they will be saddled with poor delivery and will be incapable of dealing with the new challenges that all regulators are confronted with.[448]

The issue of changeability is perhaps the most important aspect of effective regulatory performance, as the nature of the regulated market is bound to change over time, thereby presenting new risks and challenges.[449] Essentially, where the regulators fail to adapt, their regulations will be rendered obsolete and ineffective.[450] In summation, really responsive regulation admonishes regulators to consider the factors outlined above in order to fully resolve the challenges that are encountered in the regulatory process.

However, really responsive regulation comes with some challenges. First, this theory demands the consideration of a vast amount of information by the regulator. Collecting and accounting for all of these issues is bound to be a challenging task, and there is no roadmap for how this exercise is supposed to take place.[451] In addition, this theory assumes that the regulator possesses limitless resources to embark upon this exercise. This theory also exacerbates one of the challenges of responsive regulation,

[446] ibid.
[447] Baldwin (n 408) 271.
[448] ibid.
[449] ibid.
[450] ibid.
[451] Baldwin (n 408) 78.

which is the broad discretion given to regulators. A further challenge is that cultural attitudes may vary according to each situation and may varies within sectors. The near omnipotent ability to detect these changes and nuances would be required if really responsive regulation is to be applied in its entirety. To conclude, really responsive regulators would be beset by a variety of challenges caused by the significant resource and information demands imposed. This variant may also be challenged by external constraints from governmental policy and the existence of other regulators.

3.3.2.3. Meta-regulation

Meta-regulation in building upon responsive regulation, places the burden of regulation on a surrogate in order to restrict the state's direct involvement in regulatory enforcement.[452] It imposes great responsibility on the regulatees to self-regulate first, under the supervision of the regulator to ensure implementation, before further regulatory involvement.[453] This is commonly manifested through the regulatee submitting their self-regulation plan and report to the regulator, who grants approval where convinced that the regulatee is effectively self-regulating.[454] The role of the regulator is to enable regulatees to develop and disclose their own self-regulatory capacity, which the regulator scrutinises, and third parties and stakeholders can debate upon.[455]

This approach has a number of benefits, the first of which is it saves the regulator the cost of undertaking the complex task of understanding the nature of the regulatees and the context in which they operate in.[456] It also forces regulatees to develop the ability to regulate themselves effectively. Proponents of this theory assert that the regulator's role extends beyond passive monitoring, as it includes actively requiring demonstrations that the self-regulation is effective, and constant evaluations of the regulatee's ability to discharge the obligation to self-regulate.[457]

[452] Gunningham (n 374) 135.
[453] ibid.
[454] ibid.
[455] Christine Parker, *The Open Corporation: Effective Self-regulation and Democracy* (CUP 2002) 246.
[456] Gunningham (n 374) 135.
[457] Andrew Hopkins and Peter Wilkinson, 'Safety Case Regulation for the Mining Industry' (2005) National Research Centre for Occupational Health and Safety Regulation Working Paper 37/2005.

Support for this model is based on the idea that the ability to regulate complex organisations through prescriptive rules is limited, and these regulated organisations are best placed to self-regulate because they have the greatest knowledge of their own behaviour and operations.[458] This model is also encouraged because it is said to encourage regulatees to reflect upon their internal processes in light of regulatory expectations.[459]

However, this model is only likely to succeed where the regulatee has a positive attitude to this format of regulation, as recalcitrant regulatees will lead to ineffective implementation of this strategy.[460] This is supported by a number of studies which found that the motivations of managers who design self-regulatory systems are most important to the success of these systems, and as such the quality of the motivation is more relevant than the quality of the system designed to ensure self-regulation.[461] If this challenge is not addressed, then meta-regulation of this nature is bound to be unsuccessful. Another challenge is that this enterprise will require the commitment of significant resources to self-regulation, monitoring and compliance, and as such only large regulatees can be reasonably expected to fulfil this function. [462]

3.3.3. Justification of Responsive Regulation in the Research Context

The selection of responsive regulation as the core theoretical framework for this research project is justified on the basis of the similarities between its recommendations, and the corporate governance regulatory developments detailed in Chapters 1 and 2 of this thesis. As stated in section 1.1, Nigeria's Securities and Exchange Commission (SEC) introduced a regulation which amended the 2011 Code of Corporate Governance for Public Companies.[463] While the 2011 code was founded upon a 'comply or

[458] ibid.
[459] Gunningham (n 374) 136.
[460] Thornton (n 383).
[461] ibid; Christine Parker and Vibeke Nielsen, 'Do Businesses Take Compliance Systems Seriously? An Empirical Study of Implementation of Trade Practices Compliance Systems in Australia?' (2006) 30 Melbourne University Law Review 441.
[462] Gunningham (n 374) 136.
[463] (n 1).

explain' philosophy, compliance with the code's provisions instead became mandatory. In this case, the regulator first introduced a system of enforced self-regulation, or persuasion under Ayres and Braithwaite's model. However, when this approach was deemed to be ineffective, the regulator escalated to a more punitive strategy, just as advocated by the principles of responsive regulation. The examination of this research project through the lens of this theory therefore appears appropriate.

Thus, responsive regulation guides the methodology outlined in Chapter 4. As detailed in that chapter, this research project makes use of qualitative semi-structured interviews with key stakeholders, particularly corporate executives and regulatory officials, as it draws on their perceptions in order to build a practical picture of corporate governance regulation. The questions asked in the interviews are designed to fulfil a number of purposes. First, information about the style of regulation, and the attitude of regulators are sought, in order to confirm whether this system truly embodies the principles of responsive regulation.

Other considerations include the impact of multiple regulators on the state of regulation, and the effectiveness of the escalation by the SEC. As outlined in the discussion on responsive regulation, the presence of multiple regulatory actors could affect the effectiveness of this strategy. The situation in this research context emphasises this point, as of February 2020, there were six different codes of corporate governance in operation, each administered by a different regulator.[464] These codes often contain different provisions, leading to uncertainty in the application of corporate governance standards. Research undertaken by Osemeke and Adegbite in 2014 suggests that the multiplicity of regulators and codes contributes to poor compliance rates by firms in Nigeria, and results in ineffective monitoring by regulatory agencies, both of which impede good corporate governance practices.[465] It is therefore necessary to further enquire whether the application of responsive regulation here has been impacted by this factor.

[464] Financial Reporting Council of Nigeria, 'Nigerian Code of Corporate Governance 2018' (2018) iv < https://drive.google.com/file/d/1-g0OFjHQpPb1bOg3MZ751HKyf2VYXNa3/view?usp=sharing> accessed 16 June 2018.
[465] Osemeke and Adegbite (n 192) 435.

Additional considerations of responsive regulation here include whether the regulators possess the ability and support to escalate to more punitive measures, and, whether there are concerns that the discretion granted to a regulator by a responsive approach is subject to abuse or non-transparent use. The suppositions of smart regulation and really responsive regulation are also tested in the construction of the interviews, as it is important to consider whether there are other institutional influences which may affect the compliance behaviour of companies. Really responsive regulation's recommendation that regulators conduct an analysis of their performance in order to assess whether the current strategies are achieving the stated regulatory objectives, also influences the direction of the interview guide. This is important because it provides information about the success or otherwise of strategies, and highlights any necessary modifications required.

The selection of responsive regulation in this research project is therefore justified on the basis that it is expected to reveal what, if any, impact the regulatory developments in Nigeria have had. The information gleaned from this enquiry subsequently helps to formulate an answer to the question: can escalation to mandatory corporate governance regulation improve corporate governance standards within the institutional context of an emerging market like Nigeria?

3.4. Chapter Summary

While Chapter 2 provided the jurisdictional context for this research project, this chapter has provided the academic context necessary for this enquiry. The discussion here commenced with the definitions of the interdisciplinary field of corporate governance, and the differing conceptions about its purpose. Four theories deemed essential to this research enquiry were considered, namely agency, stewardship, stakeholder and institutional theories. The assertions and criticisms of these theories were outlined, as well as their practical implications for, and manifestations in corporate governance regulation. The parallels between each theory and the research context were also drawn in order to emphasise their relevance and impact on the research output.

Thereafter, the concept of corporate governance regulation was considered, along with the two models of self-regulation and state-regulation. Finally, because the widely adopted model of self-regulation has been rejected by the Nigerian regulators, this chapter considered how the theory of responsive regulation could be applicable in this country. This theory proposes a model that enables regulators to deploy hybrid solutions, by escalating their strategies in increasing order of severity through a pyramid of regulation. The selection of this theory was justified on the basis of the existing parallels with the research context, and the influence of this theory on the design of this project was also outlined.

4. Methodology

This research project makes use of the socio-legal methodology and the qualitative interview method, as it addresses the research objectives within the literature and context outlined in the preceding chapters. This process entailed the use of semi-structured interviews to collect data from participants, comprising of company executives and regulatory officials. Due to the COVID-19 pandemic and the resulting health regulations, face-to-face interviews became unfeasible and, as a result, the interviews were conducted by way of video conferencing and telephone.

This chapter commences by establishing the theoretical rationale for the socio-legal methodology in section 4.1, before explaining how qualitative interviews were used and analysed, as well as the practical challenges encountered in the conduct of the interviews in section 4.2. Section 4.3 elaborates upon the ethical considerations that had to be accounted for in the adoption of this methodology. Section 4.4 reflects upon the strengths and limitations of this methodology, and section 4.5. provides a summary of the chapter's contents.

4.1. Socio-Legal Methodology

Although a wide range of legal methodologies exist today, there are generally three major categories of legal research methodologies commonly adopted by researchers, namely: doctrinal research, international and comparative legal research, and socio-legal research.[466] Doctrinal research is the traditional legal methodology which focuses on the letter of the law, and relies on case law and statutes for the conduct of research, thereby applying a strictly legal approach to research.[467] Under this approach, the researcher's task is to critically examine the essential elements of court judgements and legislation, and analyse these elements in combination, in order to arrive at a credible assertion about the state of the law.[468] In providing this avenue to identify and analyse the current state of the law, the

[466] Mike McConville and Wing Hong Chui, *Research Methods for Law* (2nd edn, Edinburgh University Press 2017) 3; Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018) 4.
[467] Terry Hutchinson, 'Doctrinal research: Researching the jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018) 13.
[468] ibid.

doctrinal approach also creates a platform for the recommendation of changes to areas of law which are found to be inadequate.[469]

Doctrinal research also allows researchers to explain the law applicable in a particular area, and explain any existing areas of difficulty.[470] The doctrinal methodology is seen as being so integral to legal research, that Hutchinson argues it forms the basis of other methodologies, because a researcher would have to use the doctrinal approach to identify a particular area of law, ahead of any empirical analysis about the practical implementation of that law and its effects.[471] However, doctrinal research is often criticised on the basis that it restricts researchers to the narrow confines of legal text, such that the practical application of the law in the world is subordinate to the black letter of the law.[472]

International and comparative legal research, on the other hand, encourages the exploration of the similarities and differences between laws in different jurisdictions, as well as their respective strengths and weaknesses.[473] This approach to research has gained prominence in legal literature in recent years as global interdependence on trade and investment, and attempts to harmonise the law across the European Union's member states, have necessitated a consideration of the legal systems in other jurisdictions.[474] Comparative research is also particularly useful for researchers who are motivated to identify the best possible laws and regulations, and assess the possibility of adopting these laws and regulations within their own system.[475] The comparative element of this type of research methodology may manifest in the analysis of the black letter law in the specified jurisdictions, and therefore it may be considered an embodiment of doctrinal research.[476] However, the comparative element may also

[469] ibid.
[470] ibid.
[471] Hutchinson (n 467) 15.
[472] Pauline Westerman, 'Open or Autonomous? The Debate on Legal Methodology as a Reflection of the Debate on Law', in Mark Van Hoecke (eds), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) 91.
[473] McConville and Chui (n 466) 7.
[474] ibid; Mark Van Hoecke, 'Legal cultures, legal traditions and comparative law' (2006) Netherlands Journal of Legal Philosophy 331.
[475] Konrad Zweigert and Hein Kötz, *An Introduction to Comparative Law* (OUP 1998) 15.
[476] Jaap Hage, 'Comparative law as method and the method of comparative law' in Maurice Adams and Dirk Heirbaut (eds), *Essays in Honour of Mark van Hoecke* (Hart Publishing 2014) 37.

focus on the complex operation of these laws in practice, within the general culture of the societies they operate in.[477] While this flexibility means that this methodology can be adapted to suit the particular needs of a research project, its use is evidently limited to a comparison of laws across jurisdictions.

The socio-legal methodology is adopted in the pursuit of this project's goal of examining the responsiveness of corporate governance regulation in practice, and the potential influence of the challenges noted in Chapter 3. Although the precise meaning of socio-legal research is contentious, it may be understood as an interdisciplinary approach to analyse the law, legal phenomena, and relationships between them and society.[478] In other words, it is an approach which focuses on the law within its context. Both theoretical and empirical work may be involved in this methodology, and perspectives and methods are drawn from the humanities as well as the social sciences. Empirical socio-legal research of this kind involves the examination of law and legal processes using methods commonly associated with social research, for example, interviews and questionnaires.[479] According to Bradney, empirical socio-legal research is a worthy endeavour because 'it answers questions about law that cannot be answered in any other way.'[480]

Baldwin and Davis further explain why the empirical element of socio-legal methodology is crucial to legal research.[481] First, this approach facilitates the examination of the gap between the text and intendment of laws and regulation, and the practical reality of their application. Further, empirical research into law and legal processes answer questions about how laws work in practice, which may not be readily deciphered through doctrinal research.[482] Finally, this methodology contributes the body

[477] ibid.
[478] Fiona Cownie and Anthony Bradney, 'Socio-legal studies: a challenge to the doctrinal approach' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018) 42.
[479] Mandy Burton, 'Doing empirical research: Exploring the decision-making of magistrates and juries' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018) 66.
[480] Anthony Bradney, 'The Place of Empirical Legal Research in the Law School Curriculum', in Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2010) 1031.
[481] John Baldwin and Gwynn Davis, 'Empirical Research in Law' in Peter Cane and Mark Tushnet (eds), *The Oxford Handbook of Legal Studies* (OUP 2005) 886.
[482] Peter Cane and Herbert Kritzer, 'Introduction' in Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2010); Susan McVie, 'Challenges in Socio-Legal Empirical Research' (2011) Methods and Methodology in Creative Research CREATE UK < https://www.create.ac.uk/methods/> accessed 2 June 2019.

of knowledge by projecting the viewpoints of the consumers of regulation, i.e., the subjects and recipients of the legal process, in juxtaposition with the perspectives of the legal authorities. In the context of corporate governance regulation, these features find direct relevance, as it is important to understand the varying degrees of effectiveness of regulatory strategies, in the search for optimal regulation.

Research outcomes in this methodology outline what impact laws and legal institutions have on organisations and communities, and draw out the reactions of people and organisations to laws, whether they comply or ignore them.[483] In this case, the socio-legal methodology is being applied to gain insights into the regulatory challenges experienced in the context of a single jurisdiction, Nigeria. Knowing that the regulators of corporate governance in Nigeria have applied responsive regulatory strategies does not itself generate an understanding of how the regulatory process works in practice, and for this reason, empirical research is necessary to answer the questions raised by the application of this regulatory strategy. The limitations of the use of the socio-legal methodology in this research project, and the steps taken to mitigate them, are explored in section 4.4 below.

The empirical socio-legal researcher has a number of different methods of data collection at their disposal, including case studies, ethnography, interviews, observations and questionnaires amongst others.[484] These methods fall within the spectrum of qualitative (non-numerical) and quantitative (numerical) categories, and are designed to extract different types of information at differing levels of depth.[485] In the next section 4.2, the selection of qualitative interviews in this project is justified, and the data collection process is outlined in detail. The impact of the COVID-19 pandemic on this process is also discussed.

[483] Ibolya Losoncz, 'Methodological approaches and considerations in regulatory research, in Peter Drahos (eds), *Regulatory Theory: Foundations and Applications* (ANU Press 2017) 77.
[484] Burton (n 479) 72; Alan Bryman, *Social Research Methods* (4th edn, OUP 2012) 379.
[485] ibid; Ian Dobinson and Francis Johns, 'Legal Research as Qualitative Research' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (2nd edn, Edinburgh University Press 2017) 19.

4.2. Qualitative Interviews

Interviews are well-established methods of data collection for research purposes across many disciplines, and may be structured, unstructured or semi-structured interviews.[486] Although significant differences exist, these three forms of interviews share the common objective of eliciting information from the interviewee or the respondent.[487] Of the foregoing, structured interviews are usually conducted within the context of quantitative research using surveys and questionnaires, and contain predetermined questions with limited scope for follow-up questions.[488]

On the other hand, unstructured and semi-structured interviews are adopted by qualitative researchers who seek a greater degree of flexibility, detail, depth, and meaning from their interaction with their respondents and, as such, these two forms of interviews are commonly described as qualitative interviews.[489] Qualitative research here is understood as research which inserts the researcher or observer in the world, in order to extract a rich depth of data.[490] Unstructured interviews, as may be inferred, are conducted with minimal organisation and preconceptions. Often akin to a conversation, the researcher usually asks an open question, and the remainder of the interview is drawn from the respondent's answers.[491] Although it is best suited to research where a great deal of depth is required, this type of interview can be very time-consuming and difficult to manage.[492]

The semi-structured interview was selected as the preferred type for this research project because it offers the flexibility and depth required to extract meanings from respondents' answers, while retaining a degree of organisation tied to a series of specific questions preconceived from the research

[486] Bryman (n 484) 469; Rosalind Edwards and Janet Holland, What Is Qualitative Interviewing? (Bloomsbury 2013) 26.
[487] Bryman (n 484) 469.
[488] Paul Gill and others, 'Methods of data collection in qualitative research: interviews and focus groups.' (2008) 204 British Dental Journal 291.
[489] (n 486).
[490] Norman Denzin and Yvonne Lincoln, 'Introduction: The Discipline and Practice of Qualitative Research' in Norman Denzin and Yvonne Lincoln (eds), *The SAGE Handbook of Qualitative Research* (Sage Publications 2008) 11.
[491] ibid.
[492] ibid.

objectives.[493] This in practice means that it is possible to ask follow-up questions, or seek clarifications to answers provided, in order to extract high quality data from respondents. The flexibility of this approach facilitates the discovery of new information from the respondents, and at the same time allows the conversations to be guided by questions from the interview guide. This interview guide in this case was prepared in advance, in order to facilitate the collection of data relevant to this research project's objectives.

This preference for the interview method is also reflected in the field of corporate governance, where it has been used to research into management, accounting, legal and regulatory issues amongst others.[494] The practical contribution of qualitative interviews to this field is that they 'can assist policy-makers and practitioners to develop more efficient governance mechanisms by shedding light on the efficacy of policy prescription.'[495] This corresponds to the primary objective of this research project, which is to examine the application of responsive corporate governance regulation in Nigeria. For these reasons, this research project made use of semi-structured interviews. This selection is also in line with contemporary corporate governance research in Nigeria.[496]

Consequently, semi-structured interviews were conducted with key corporate governance stakeholders in Nigeria, including company secretaries, directors, and officials of the SEC and the FRCN, in order to develop an understanding of the impact of responsive corporate governance regulation. The differences and concurrences in the subjective perceptions of these individuals offered a great deal of insight into the application of responsive regulatory strategies within the context of this emerging market. The following sub-section details the data collection and sampling process adopted in this project.

[493] ibid.
[494] Terry McNulty, Alessandro Zattoni and Thomas Douglas, 'Developing Corporate Governance Research through Qualitative Methods: A review of previous studies' (2012) 2 Corporate Governance - An International Review 183.
[495] ibid 188.
[496] (n 21).

4.2.1. Data Collection Strategy, Sampling and COVID-19

The strategy employed to successfully collect the data desired was necessarily flexible and adaptable, constantly changing to cater to new developments. Indeed, flexibility is incredibly important when using qualitative research methods, and as highlighted in section 4.2, it creates an environment for the revelation of new information and the formulation of new questions.[497]

As previously stated, the data collection process for this research was by way of semi-structured interviews with key corporate governance stakeholders, including company secretaries and regulators. Identifying a feasible sample is a key part of research project management. However, when it comes to qualitative interviews, there is a broad consensus in the literature that the number of interviews ought not to be the dominant consideration, but rather the depth of information gleaned.[498] Ideally, interviewing should continue until data saturation is reached i.e., the point where no new information is acquired.[499]

However, for planning purposes, an operative target of 20 respondents was set out, consisting of 15 respondents representing companies, and 5 representing regulators. All respondents must have participated in key corporate governance functions between 2014 and 2019, the timeline during which the responsive reforms analysed by this project occurred. Company representatives in this light included company secretaries, board directors and other members of senior management involved in corporate governance functions, drawn from companies listed on the Nigerian Stock Exchange. These publicly listed companies are the primary focus of corporate governance regulation, and as such their personnel in charge of corporate governance functions are in a brilliant position to offer insights into the state of regulation. Corporate governance advisory firms and law firms that offer company secretarial functions to these public companies were also targeted within this group as secondary targets.

[497] Bryman (n 484) 472.
[498] Elizabeth Burmeister and Leanne Aitken, 'Sample size: How many is enough?' (2012) 25 Australian Critical Care 271.
[499] Greg Guest, Arwen Bunce and Laura Johnson, 'How Many Interviews Are Enough? An Experiment with Data Saturation and Variability' (2006) 18 Field Methods 59.

The state actors were to be drawn primarily from the corporate governance departments of the SEC and FRCN, as these are the two regulators that have applied responsive strategies that serve as the focus of this research project. Fewer regulators were targeted in comparison to company representatives for a couple of reasons. First, there is a larger pool of company representatives, when compared to the pool of regulatory officials from the SEC and FRCN. Second, regulators are notoriously difficult to recruit, as reported in previous studies on corporate governance in Nigeria.[500] Despite the assurance of anonymity, regulators tend to be distrustful, which is not entirely surprising given the confidential nature of their job functions, and the accompanying high degree of risk. In addition, when regulators agree to participate in research interviews, they may insist on not being recorded, and may also insist on choosing neutral and clandestine locations for the interview, such as underground car parks.[501]

Company representatives and regulators are evidently high-level targets, and the challenge of gaining access to interview them was always going to be incredibly difficult. Such high-level targets are described as 'elites' in the literature, because of their wealth of knowledge, status, and power.[502] As a result of their status, elites are difficult to gain access to, and researchers have to establish credible plans to gain access, and should also be ready to modify their research strategies due to this difficulty.[503] Nonetheless, the issue of access in empirical research may involve a significant amount of luck, which cannot be readily engineered.[504] Having factored in the difficulty of access into the research design, it became clear that field research in Nigeria was necessary in order to develop the relationships and trust required to interview these elites face-to-face. The field visit was planned to take place over a six-week period from April till May 2020, timed to take advantage of the spate of Annual General Meetings and corporate governance conferences that traditionally take place within this period. The rationale behind

[500] Adegbite (n 3); Franklin Nakpodia, 'An Assessment of Institutional Influences on Corporate Governance in Nigeria: A Multi-Stakeholder Perspective' (2016) Northumbria University <https://bit.ly/2UQvzPS> accessed 12 November 2018.
[501] Nakpodia (n 4) 102.
[502] Harriet Zuckerman, 'Interviewing an ultra-elite' (1972) 36 Public Opinion Quarterly 159; Darren Lilleker, 'Interviewing the political elite: Navigating a potential minefield' (2003) 23 Politics 207.
[503] ibid.
[504] Burton (n 479) 75.

this was that with corporate governance being high on everyone's agenda, research on corporate governance regulation might be more likely to attract the attention of these elites.

Direct access was to be tackled through leveraging personal and professional networks, as I had established early contact with lawyers and academics with expertise in the region. Upon conducting the first interview, I planned to apply snowball sampling techniques, by asking respondents to nominate and provide references to other qualified contacts to participate in the research project.[505] This data collection process was approved by the University Research Ethics Committee in December 2019, and insurance cover for the field trip was granted in the same month. In early March 2020, the travel itinerary, including details of flights and accommodation, were undergoing final approval by the research group, when the COVID-19 pandemic struck the UK and large parts of the world.[506]

The pandemic had immediate consequences for the data collection strategy envisaged above. First, on the March 17, 2020, the Foreign and Commonwealth Office (FCO), as it was known at the time, advised against international travel unless where absolutely necessary.[507] As the University's insurance cover was based on the FCO's travel advice, the insurance cover for the field trip was immediately invalidated. Around the same time, the University confirmed that research trips were not considered non-essential, and were therefore suspended until further notice. The UK subsequently went into lockdown i.e., people were required to stay at home, and restrictions were imposed on social gatherings indefinitely, in order to contain the spread of the pandemic.[508] Unsurprisingly, these developments halted the travel plans for the data collection. In addition, The Federal Government of Nigeria imposed lockdown restrictions in Lagos State and the Federal Capital Territory, Abuja, which were the two areas to be visited during the research trip.[509] This was in response to the rising number of COVID-19 cases, a number of which were

[505] Martyn Denscombe, *The good research guide: for small-scale social research projects* (OUP 2014) 42.
[506]World Health Organisation, 'Coronavirus disease (COVID-19)' <https://bit.ly/3nIrYj9> accessed 20 November 2020.
[507] Foreign and Commonwealth Office, 'Travel Advice against all non-essential travel: Foreign Secretary's statement, 17 March 2020' < https://bit.ly/3nQGgON> accessed 20 November 2020.
[508] Prime Minister's Office, 'Prime Minister's statement on coronavirus (COVID-19): 23 March 2020' <https://bit.ly/3nNrybi>accessed 20 November 2020.
[509] Fidelis Mbah, 'Nigeria announces lockdown of major cities to curb coronavirus' *Aljazeera* (30 March 2020) <https://bit.ly/337rqeE> accessed 20 November 2020.

traced to visitors from the UK.[510] It was therefore not a great time to approach potential targets as a researcher from the UK.

The cumulative effect of the pandemic and the ensuing restrictions was that the conduct of face-to-face interviews and international travel became highly unfeasible, and I had to quickly develop an alternative strategy for the data collection. This strategy manifested in the form of remote interviews, which are especially useful when interviewing people in geographically remote locations.[511] The selection of remote interviews was reinforced by the literature, as a significant number of studies found that there were no remarkable differences in quality between interviews conducted remotely and those conducted in-person.[512] Remote interviews also have the additional advantages of cost and time savings, as travel is not required.[513] Furthermore, they allow participants to be interviewed in their familiar environments, which may allow them to be more comfortable in expressing their opinions.[514]

However, remote interviews may result in more stilted conversations, as important unspoken cues, such as body language, may either be lost, as in the case of telephone interviews, or be more difficult to pick up on, in the case of videoconferencing interviews.[515] There is also a concern that remote interviews excludes a significant proportion of potential participants, who for whatever reasons do not have the capacity to partake in remote interviews.[516] Notwithstanding these concerns, remote interviews appeared to be the clear solution to the limitations introduced by the pandemic, especially since this form of interviews had gained prominence in the literature, and were increasingly used in opinion and policy research.[517]

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[510] Nigeria Centre for Disease Control, 'Five new cases of coronavirus disease (COVID-19) confirmed in Nigeria' (2020) < https://bit.ly/3nSbxRv> accessed 20 November 2020.
[511] Judith Sturges and Kathleen Hanrahan, 'Comparing Telephone and Face-to-Face Qualitative Interviewing: a Research Note' (2004) Qualitative Research 107; Kimberly Musselwhite and others, 'The telephone interview is an effective method of data collection in clinical nursing research: a discussion paper.' (2007) 44 International Journal of Nursing Studies 1064; Amanda Bolderston, 'Conducting a Research Interview' (2012) 43 Journal of Medical Imaging and Radiation Sciences 66.
[512] ibid.
[513] Bolderston (n 511) 68.
[514] Lokman Meho, 'E-mail interviewing in qualitative research: A methodological discussion' (2006) 57 Journal of the American Society for Information Science and Technology 1284.
[515] Bolderston (n 511) 72.
[516] ibid.
[517] ibid 68.

Having decided on this alternate strategy, the challenge of access to potential interview participants came into full focus. Gaining access to elites was always going to be difficult under normal circumstances, however, with the pandemic, the challenge of access appeared to have increased by an order of magnitude. This was because there was little room to earn the trust of potential respondents in an informal setting, as it was not possible to attend any physical events. In addition, the pandemic was a source of concern for many people, especially with regards to their health and that of their loved ones. The issue of job security also come to the fore, as it became quickly apparent that lockdown restrictions threatened the stability of many organisations. I was therefore not surprised when the majority of my contacts became unresponsive in the early stages of the pandemic, and I was careful not to be too forceful in light of the global situation.

Consequently, I had to focus all of my efforts on recruiting participants online. Identifying the company representatives was relatively easy, as their names and positions were conspicuously stated in their respective companies' annual reports and the relevant sections of their websites. Rarely, some of these representatives also had their email addresses listed, and I was therefore able to send them emails introducing myself and the research protocol. For the rest of the targets, the use of the professional networking site LinkedIn, was a major breakthrough. This is because many professionals have accounts on this site, where they provide a summary of their professional background, and list their work experience along with the relevant dates of employment. This meant that it was possible to identify individuals who qualified to participate in the interviews, particularly the regulatory officials within the corporate governance departments of the FRCN and SEC.

Following identification, I sent them requests to 'connect' and join their circle, along with a short message of 300 characters or less about the research project. As a premium feature, I was also able to send direct messages and attachments without any length restrictions, and these essentially functioned as emails sent directly to these targets. However, these direct messages were limited to a total of 15 per month, and I decided to 'spend' this allowance on individuals that I determined were likely to provide

high quality data. These individuals were those who had remained in governance facing roles for the entire period from 2014 till 2020, or were regulators within the corporate governance departments of the SEC or the FRCN. Once an individual accepted my connection request, I was able to communicate with them freely without restrictions.

In all, I sent about 260 connection requests and direct messages on the networking site, as well as emails to those whose email addresses were publicly available. However, it became quickly apparent that the challenge of converting these initial contacts into real interviews was going to be herculean. The vast majority of these messages went unanswered, and this was particularly the case with regulators, despite sending detailed direct messages and reminders on the networking site. Some persons initially responded positively, only to not respond to subsequent messages. In fact, two people ceased contact after agreeing to be interviewed. There were also some individuals who replied to express their lack of interest. One person said they would only be interested if I was able to find a mutual contact to provide a recommendation. This was one instance where 'snowballing' as described above would have been of benefit. Unfortunately, I was not able to arrange that in this case.

Another simply said that they were not interested in participating in the research project at that point in time, however they asked me to keep in touch, presumably with regards to future projects. One response which was particularly illuminating, was that I should focus my efforts on COVID-19 instead. As stated above, the pandemic created a lot of disruption to lives and livelihoods. People were concerned about whether life would ever remain the same, and global attention was focused on understanding how the virus spreads, as well as the development of vaccines and other methods of treatment. Therefore, I understood why this person apparently thought I should focus my efforts on COVID-19. Unfortunately, this person did not respond to any further messages, so I was not able to fully appreciate their perspective. Nonetheless, I decided that I should not ignore the pandemic in subsequent messages. From that moment, I pointedly expressed my hope that the pandemic had not been too disruptive to recipients of my message, and I stated that the research questions would include questions about how the pandemic was affecting their corporate governance operations. Although this was an addition, the nature of the

research, which at its heart focuses on the relationship between the regulators and companies, meant that asking how COVID-19 was affecting this relationship did not constitute a significant departure from the general theme of the interviews. If anything, it allowed for the collection of a rich stream of information that I had not previously envisaged.

Another lesson I learned from the responses was that my timing for the interviews was less than ideal, even without considering the impact of the pandemic. While I had thought conducting research during the peak season of Annual General Meetings and corporate governance events was a good idea, it became apparent that the people I was contacting were very busy trying to organise, prepare, or review the various aspects associated with these events. The pandemic also meant that many of these events were either postponed or had to be revised, and for the company meetings, regulators had to prepare new directives to govern their conduct within the health restrictions. The company representatives were also focused on applying these directives to hold their meetings in a COVID-19-compliant way. Most of the individuals I successfully interviewed confirmed what a busy period this was for them, and a few of these interviews had to be rescheduled at the last minute as a result.

4.2.2. Data Collection Outcome and Respondent Characteristics

There were 12 respondents in total, comprising of 10 company executives (company secretaries and a director) and 2 regulators. 5 of these interviews were conducted through videoconferencing, while the remaining 7 interviews were by telephone. The sample of executives were drawn from the companies listed on the Nigerian Stock Exchange as of May 2020, and each of the two regulators were selected from the SEC and FRCN respectively. Figure 4.1 and Table 4.2 provide information about these respondents, including their sectors and background. The questions asked in the interviews included: the impact of the regulators' escalation on the responsiveness pyramid, the resources and capacity of regulators, the engagement between the regulator and regulated, the effect of a polycentric system of regulation, and the impact of the COVID-19 pandemic on regulatory responsiveness.

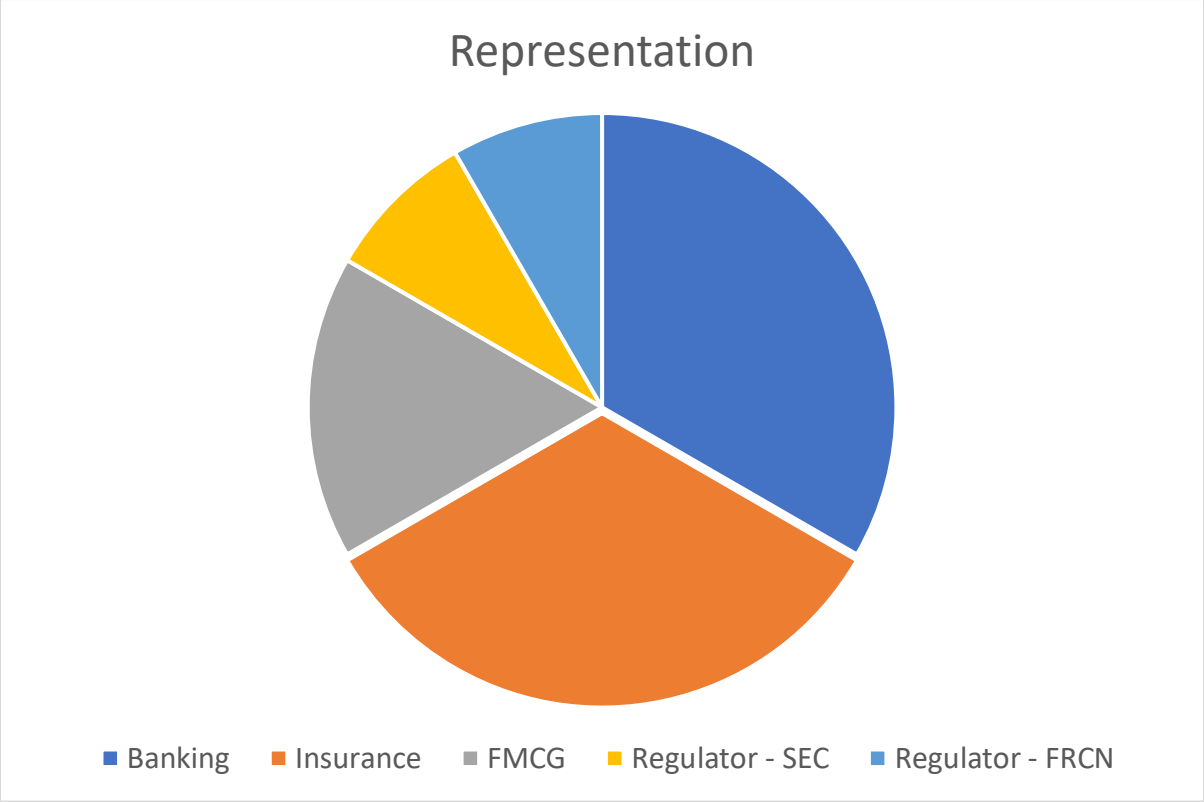

Figure 4.1*: Sector Representation of Interview Participants (Source: Interview Data)*

Participant	Job Title	Sector	Interview Date	Background	Experience
E1	Ex-Company Secretary	FMCG	06/07/2020	Legal	> 15 years
E2	Company Secretary	Insurance	07/05/2020	Legal	> 10 years
E3	Various board executive and non-executive roles	Insurance	27/05/2020	Legal	> 20 years
E4	Ex-Company Secretary	Insurance	23/05/2020	Legal	> 5 years
E5	Company Secretary	Banking	28/05/2020	Legal	< 5 years
E6	Ex-Company Secretary	Banking	03/06/2020	Legal	> 10 years
E7	Company Secretary	Banking	22/06/2020	Legal / Audit	> 25 years
E8	Company Secretary	Banking	27/05/2020	Legal	> 5 years
E9	Company Secretary	FMCG	28/05/2020	Legal	> 10 years
E10	Company Secretary	Insurance	15/05/2020	Legal	> 5 years
R1	Regulator	FRCN	13/06/2020	Audit	> 5 years
R2	Regulator	SEC	10/07/2020	Audit	> 5 years

Table 4.2: *Details of Interview Participants*

At the start of each interview, the respondent was asked to outline their job description and expertise in the field of corporate governance, in order to reinforce their qualification to participate in this study. All 12 respondents confirmed their status as key corporate governance stakeholders. Coding techniques were used to protect the identity of respondents, with the letter 'E' assigned to company executives and 'R' for regulators.

While the respondents are from legal and audit backgrounds, the nature of the subject matter of corporate governance regulation means that this was reasonably expected. Nonetheless, the company executives represent three different sectors: banking, insurance, and fast-moving consumer goods (FMCG). This sampling spread was important because the system of corporate governance regulation

in Nigeria is polycentric, as outlined in Chapter 2, with the banking and insurance sectors subject to additional codes of corporate governance issued by their sectoral regulators. The inclusion of these company executives therefore made it possible to enquire about the impact of the afore mentioned polycentricity on responsive regulation. The inclusion of regulators from the SEC and FRCN also ensured that insights into each regulator's operations was obtained.

Although a larger sample size and spread would be ideal, the conduct of these interviews with 12 respondents generated a substantial volume of data relevant to the objectives of this thesis, as demonstrated in sub-section 4.2.3 and Chapter 5. When viewed in light of the challenges posed by the COVID-19 pandemic to the research design as discussed above, the collection of this data ultimately amounts to a positive outcome.

Nonetheless, and as discussed earlier, the focus of any data collection exercise ought to be on the quality of the information obtained, and not the number of participants. According to some scholars, this quality is likely to be enhanced by the participation of experts within the field being researched, as their wealth of experience means that it is possible to find common ground among them.[518] Therefore, they argue that small samples of such experienced experts can result in the collection of information of high quality.[519] This approach was certainly borne out in the this data collection exercise, as the nature of the research enquiry necessitated interviewing experts who have had the first-hand experience of participating in corporate governance regulation at the highest level. Table 4.2 emphasises this point by providing the number of years of experience the respondents had at the time of the interview, albeit within five-year ranges in order to limit the risk of inadvertently revealing their identities.

[518] Kimball Romney, Susan Weller, and William Batchelder, 'Culture as consensus: A theory of culture and informant accuracy' (1986) 88 American 313; Sarah Baker and Rosalind Edwards, 'How many qualitative interviews is enough? Expert voices and early career reflections on sampling and cases in qualitative research' (2012) National Centre for Research Methods 4 <http://eprints.ncrm.ac.uk/2273/> accessed 20 November 2020.
[519] ibid.

4.2.3. Data Analysis

It is not enough to merely conduct interviews, the contents of these interviews must be analysed in order to answer the questions at the heart of the research project. Consequently, qualitative interviews are usually recorded and transcribed where possible to aid analysis and protect the integrity of the data.[520] These processes also guard against the limitations of the human memory and preserve data for secondary analysis.[521]

Some of the most common methods of analysing interviews include thematic content analysis, grounded theory and narrative analysis.[522] Of these, thematic content analysis is most often adopted in qualitative studies, particularly when interviews are used.[523] Thematic content analysis can be described as a means of detecting, analysing and reporting similar patterns of meaning that appear within qualitative data.[524] This process requires a great deal of familiarity with the transcripts, the development of 'codes' or descriptions from these transcripts, the identification of larger themes from the codes, and the development of these themes into a comprehensive report.[525] One major advantage of this approach to analysis is its flexibility, which caters to the peculiarities of each research project, and is compatible with a wide range of theoretical perspectives.[526] This means that a researcher is able to identify common themes from the transcript based on their subjective analysis within the context of the theory underpinning the research, as opposed to having to analyse using a rigid formula. However, this flexibility gives rise to criticism that thematic content analysis may result in an 'anything goes' approach to research, resulting in substandard quality of data analysis.[527]

[520] Bryman (n 484) 482.
[521] ibid.
[522] Rosalind Edwards and Janet Holland, *What Is Qualitative Interviewing?* (Bloomsbury 2013) 26.
[523] ibid, Hsiu-Fang Hsieh and Sarah Shannon, 'Three approaches to qualitative content analysis' (2005) 15 Qualitative Health Research 1277; Satu Elo and others, 'Qualitative Content Analysis: A focus on Trustworthiness' (2014) 4 SAGE Open 10.
[524] Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3 Qualitative Research in Psychology 79.
[525] ibid.
[526] ibid 77.
[527] Charles Antaki and others, 'Discourse Analysis Means Doing Analysis: A Critique of Six Analytic Shortcomings' (2003) Discourse Analysis Online 1 <https://bit.ly/3q7QYCe> accessed 20 November 2020.

Nonetheless, this type of analysis is particularly useful for analysing multi-faceted subject matter, as it provides a framework which integrates disparate elements through the identification of similar patterns.[528] Thematic content analysis is also useful for managing the voluminous transcripts that are often generated in qualitative studies, and it allows the researcher to narrow these texts down to fit within the confines of the research project.[529]

Therefore, thematic content analysis was used to digest the approximately sixty thousand words of data generated from the interviews. As recommended by the literature on qualitative research, the analysis process began with familiarisation with the data whilst the interviews were being conducted, by listening out for, and taking note of interesting information and patterns of meaning.[530] This was built upon during the production of the transcripts, as it was possible to go over the interviews again and highlight key information within the text. A verbatim approach to transcription was adopted in order to ensure the text accurately captured the conversations. Therefore, pauses, filler words, repetitions, and interruptions, were recorded within the transcripts. Other commentary were also noted in parentheses, for instance comments explaining that parts of the audio recording were inaudible. Square brackets were used to indicate the withholding of information that could identify the respondent, for instance names of individuals and companies.

Although the process of producing the transcripts was laborious, it was indeed a useful way of developing an early interpretation of written text, as recommended by leading experts in qualitative analysis.[531] Upon completion, the transcripts were uploaded into NVivo 12, a computer software programme that aids qualitative data analysis. Within this software, the transcripts were read multiple times, and interesting elements were 'coded.' Coding within this context means identifying elements

[528] Satu Elo and Helvi Kyngas, 'The qualitative content analysis process' (2008) 62 Journal of Advanced Nursing 107.
[529] ibid; Steve Stemler, 'An overview of content analysis' (2001) 7 Practical Assessment, Research and Evaluation 137.
[530] (n 523); (n 524); (n 528).
[531] Judith Lapadat and Anne Lindsay, 'Transcription in Research and Practice: From Standardization of Technique to Interpretive Positionings' (1999) 5 Qualitative Inquiry 64.

within the text that are interesting, and giving these elements an appellation that meaningfully describes them, for instance: 'conflict management.'[532] Portions of the text from other interviews or within the same interview, that share common elements are given the same code. Using the NVivo software, it was therefore possible to group different portions of text together, and conduct closer analyses and comparisons based on the coding. The initial coding divisions that the interview transcripts were split into using NVivo 12 are detailed in Table 4.3 below.

Name	Number of Interviews	Frequency
Abuse of regulatory power and fines	7	11
Areas of challenge	8	14
Attitude to regulation	8	23
Company's effort towards regulation	7	22
Conflict management	12	33
Covid 19 Pandemic effect	8	12
Current state of regulation of corporate governance	12	20
Effect of previous fines	3	3
Engagement with Regulators	12	32
FRC's New code	11	29
FRC's Old code	11	19
FRC's resources and capacity	4	6
Improvements	11	26
Influence of multinational parents	5	6
Mandatory style	12	26
Multiplicity of regulators	12	40
Negative reviews of FRC	11	25
Negative reviews of SEC	8	20
Positive reviews of FRC	10	18
Positive reviews of SEC	8	22
Professional Background	12	18
Quality of Board	3	5
Reforms	10	22
Regulator's attitude	8	32

[532] (n 524) 88; Richard Boyatzis, *Transforming qualitative information: Thematic analysis and code development* (Sage Publications 1998).

Name	Number of Interviews	Frequency
Relationship between regulators	8	15
Room for improvement	12	38
SEC's resources and capacity	7	12
Substance of improvement	8	17
Weight of fines	7	12

***Table 4.3**: Initial Coding Framework (NVivo)*

Interview	Number of Codes	Frequency of Codes
E01	24	77
E02	21	50
E03	25	47
E04	26	71
E05	23	41
E06	19	38
E07	21	50
E08	22	40
E09	25	44
E10	17	30
R01	21	41
R02	23	61

***Table 4.4**: Interview Coding Frequency (NVivo)*

Assessment of the current system	• Current state of regulation: challenging areas, improvements, and substance of improvement. • Influence of multinationals. • Companies' effort towards regulation and regulator's attitude • COVID 19.
The nature of polycentric regulation	• Multiplicity of regulators • Conflict management • Relationship between regulators • Engagement with regulators
Limitations of polycentric/responsive regulation	• Regulators resources and capacity • Engagement with regulators • Weight of fines and effect of previous fines • Abuse of regulatory power
Optimism and resolution	• Room for improvements and reforms • Reviews of regulators

Figure 4.5: *Thematic Map*

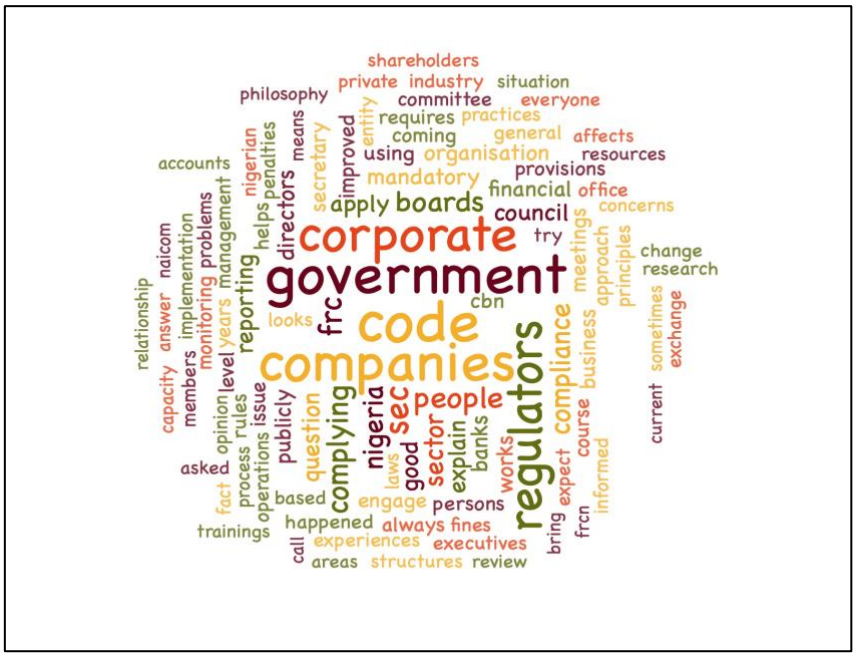

Figure 4.6*: Word Frequency Report (NVivo)*

Subsequently, the codes were grouped into larger themes, thereby deepening the level of analysis and beginning to build a narrative from the data. A theme here means an important pattern which is relevant to the research questions, that appears from the data.[533] Figure 4.5 details the thematic map developed in this process, and Figure 4.6 shows a report of a word frequency search produced by the NVivo software.

Codes and themes can be identified by the frequency with which they occur within the interview transcripts, however there are no rigid rules on how frequently a pattern has to appear before it is identified as such.[534] This is because the identification of codes and themes is an inherently subjective process that relies on the judgement of the researcher. The judgement process used in the analysis in this research project was varied. Some codes were drawn out based on how frequently they appeared, although the frequency was naturally influenced by the formulation of questions put to the respondents. So, for example it was no surprise that all of the respondents talked about their professional expertise and qualifications, because they were all asked this question. However, some elements appeared unprompted, for instance, the doubts about the substance of the apparent improvement in corporate governance was shared by the majority of corporate executives, as further elaborated upon in Chapter 5, so this pattern was identified as a code and subsequently incorporated into a theme.

Other elements, such as the resource-limitations of the regulators, did not appear based on prevalence, as the regulators who spoke on this issue were outnumbered within the overall sample size by company executives, who were not as qualified to speak on the issue. Nonetheless this was identified as a relevant element as a result of its significance to the research questions, particularly its impact upon the ability of a regulator to escalate its response along the pyramid of regulation, as discussed in Chapter 5. This therefore emphasises the point that there are no rigid rules on the identification of codes and themes within transcripts.

[533] (n 524) 99.
[534] ibid 82.

Nonetheless, the process of identifying codes and themes is influenced by whether an inductive i.e., driven by the data, or deductive i.e., driven by theory, approach is taken.[535] The inductive approach was a key influence here, as it was important to allow the data to reveal meaning, without trying to shoehorn the data to fit within the expectations of the theory. However, it is impossible to ignore the influence of the literature review that was conducted ahead of data collection, and the key issues that arose from the analysis of responsive regulation therein. This review of the literature influenced the formulation of the questions put to the respondents, and ensured that I knew what to look out for within the data in relation to responsive regulation. The development of the codes and themes was therefore also significantly driven by theory.

4.3. Ethical Considerations

Ethical considerations are an integral part of research design, and are necessary to safeguard the interests of the participants, the researcher and other parties affected directly or indirectly by the research agenda. This section outlines the major ethical issues envisaged in this project, and the strategies applied in their mitigation.

According to Diener and Crandall, the critical ethical issues that arise in the context of qualitative research can be broadly categorised into four concerns: avoidance of harm, informed consent, maintenance of privacy, and avoidance of deception.[536] In addition, the Economic and Social Research Council (ESRC) outlines six general ethical principles to be accounted for in the conduct of research, which build upon the concerns advanced by Diener and Crandall.[537] First, research should minimise risk and harm. Second, the rights and dignity of participants should be respected. Third, informed consent should be obtained. Fourth, research should be conducted with integrity and transparency. Fifth,

[535] Hannah Frith and Kate Gleeson, 'Clothing and Embodiment: Men Managing Body Image and Appearance' (2004) 5 Psychology of Men & Masculinity 40; Michael Patton, *Qualitative evaluation and research* methods (Sage Publications 1990); Boyatzis (n 532); (n 524) 83.
[536] Edward Diener and Rick Crandall, *Ethics in social and behavioral research* (UCP 1978) 19; Bryman (n 484) 135.
[537] Economic and Social Research Council, 'Our core principles' (2019) < https://bit.ly/2K4wtVr> accessed 29 November 2020.

responsibility and accountability should be provided for. Finally, research should remain independent, and conflicts of interests should be avoided, or disclosed. These combined principles are considered below, in addition to the steps taken to account for these ethical concerns.

The first issue of harm is all encompassing, and proscribes research that is likely to cause harm to the participants or the researcher. Harm could be physical or mental. The latter includes harm to self-esteem, stress, shame, and dissatisfaction, amongst others.[538] In the context of this research, harm could involve compromising the interview participants' reputations and job security. The Social Research Association's ethical code succinctly advocates this principle by advising researchers to 'minimise disturbance to subjects themselves and to the subject's relationships with their environment.'[539] Essentially, participation in the research should not have a materially adverse effect on participants, or their environment. There is therefore a duty of confidentiality to participants. In practical terms, this means that the information, data and records of participants should be kept confidential.[540]

In mitigation of the risk of harm to participants, the research design incorporated safeguards to protect their confidentiality. With the permission of respondents, the interviews were recorded. The first safeguard was ensuring the recording was by way of encrypted and password protected voice recorders, which were only handled by me. The digital recordings were also kept on a password-protected computer and stored with generic file names. The recordings were typed out into a document by me, and the transcripts generated were anonymised, such that any information that could be used to identify the individuals and organisations was removed, for instance names, addresses, places of work etc. As some interviews were to be conducted via videoconferencing, care was taken to ensure the security of these video interviews. They were password protected, and the link to each interview was uniquely created such that only the respondent who was sent the link could gain access to the interview.

As stated above, codes were used in the production of the transcripts to identify the comments of the respondents and their characteristics for the purpose of this study. The decision to personally conduct

[538] Diener and Crandall (n 536) 19.
[539] Social Research Association, 'Ethical Guidelines' (2003) 35 < https://bit.ly/11GISE9> accessed 1 June 2019.
[540] Mark Israel and Ian Hay, *Research Ethics for Social Scientists* (Sage Publications 2004) 94.

these processes limits the risk of disclosure, and if other officials from Aston University need to access the data for accuracy checks, the data will be treated as confidential by them. Records and transcripts were also stored in secure locations to prevent unauthorised access, and will be destroyed when they become redundant. The respondents were assured of these safeguards in the information sheet given to them ahead of the interview, and these safeguards were reinforced at the start of each interview.

Where published in journals or books, respondents' data will again be anonymised using coding techniques, however care has to be taken to ensure the process of randomisation does not destroy the research value of the interview.[541] With respect to harm to the researcher, the nature of the proposed research did not pose immediate risks, especially as the interviews were conducted remotely.

On the second principle, great care was taken to respect the rights and dignity of the respondents. The respondents were provided with the information sheet which detailed their rights and the research objectives, well in advance of the interview. At the start of each interview, this information was reiterated, and the respondents were reminded of their right to refuse to answer questions without giving a reason. The respondents were also free to choose the date and time for the interview, and were given a choice between telephone and videoconferencing as the medium for the interview. This ensured that the burden of participating in this research project was minimised as far as possible.

The third principle of informed consent provides that prospective respondents should be given as much information about the research project as needed, so that their decision to participate or otherwise is well-informed.[542] This principle also helps to enhance efforts to prevent harm to participants. In practical terms, this principle was adhered to through the provision of informed consent forms and comprehensive protocol documents to the respondents.[543] This ensured that they were adequately informed of the research purposes and the potential applications of the data to be supplied, and were aware of the purposes for which their data is being used. They were also aware of their right to withdraw

[541] Tom Wengraf, *Qualitative Research Interviewing: Biographic Narrative and Semi-Structured Methods* (SAGE Publications 2001) 187.
[542] Bryman (n 484) 137.
[543] ibid.

their data from the research process at any point. The information in the protocol documents was also reiterated at the start of each interview in order to make sure the respondents were fully informed, and were participating in the interview on their own volition.

On the fifth principle of responsibility and accountability, this research project was overseen by my supervisors and approved by Aston University's ethics committee. The information sheet given to the respondents stated the details of the supervisory team and the University's Research Integrity Office, and thus respondents were aware of the chain of responsibility. The sixth principle of independence and conflict of interest was also adhered to in the information sheet given to the respondents. They were informed of my position as a research student, that research project was solely sponsored by Aston University, and that no third parties were involved.

The interview guide, the consent form, ethical approval (statement of favourable ethical opinion), and participant information sheet that governed the ethical conduct of this study are attached as appendices to this thesis.

4.4. Challenges and Limitations

There were a number of issues which appeared in the process of using the data collection method outlined in the preceding sections. The challenges specific to this particular research project are detailed in sub-section 4.4.1, and the general limitations of the use of qualitative interviews and the socio-legal methodology are outlined in sub-section 4.4.2.

4.4.1. Challenges

Perhaps the most significant challenge experienced was that of gaining access, as previously explained in section 4.2. The COVID-19 pandemic exacerbated this challenge, and necessitated revisions to the research design, particularly through the conduct of remote interviews via telephone and videoconferencing. The conduct of remote interviews also introduced further complications to the data collection process. First, the quality of the audio was often unstable, which meant it was not always

easy for the respondents and I to hear each other. This also meant that the conversations were less smooth-flowing than they would likely be in a face-to-face context.

As a result of the nature of interviewing people in their home or work settings, there were also several interruptions that disrupted the flow of conversation. Some participants had to deal with issues within the home, and other participants had to answer urgent work calls or attend to other important issues. There were also instances where the video or telephone connection failed, and the connection had to be re-established.

These issues introduced further complications to the process of transcribing the audio recordings, as it took several hours to discern what was being said. In one particular instance, a respondent's dog was barking in the background for the entire duration of the interview, and it was incredibly challenging to pick out the words said whilst the barks were at their loudest. Transcription challenges were mitigated by playing the audio recordings at half speed, to assist with the identification of the spoken words. I also observed that the digital recordings from the video interviews were of better quality than the telephone interviews recorded manually by voice recorders.

4.4.2. Limitations

The strengths of the socio-legal methodology and qualitative method used for this research project were previously outlined in sections 4.1 and 4.2 respectively. However, there are a number of limitations which may hinder the effectiveness of their usage, some of which manifested as the challenges of access and transcription discussed above.

Of these limitations, perhaps the most significant one concerns the reliability of interview-generated data for research purposes. As several commentators have noted, people do not always do what they claim to do, and as such there is always the risk that the interview respondents may misinform, evade,

lie or put-up fronts when responding to the researcher's questions.[544] Consequently, in the absence of alternative means of verification, there is a limit to how much reliance can be placed on interview-generated data. One popular method used to mitigate this limitation is triangulation, which comprises of the use of multiple elements, methods or sources of data collection in order to observe whether there is a convergence in the information generated by the different elements.[545] Four types of triangulation are advocated: methods triangulation, source triangulation, analyst triangulation and theory triangulation.[546] Of these, methods triangulation is the most favoured, and often entails a combination of questionnaires, observations, interviews, and document analysis.[547]

However, methods triangulation imposes significant cost constraints, requires training in the use of multiple methods, and takes a long time to complete.[548] Set against the nature of this doctoral research project, which operated on a limited budget within a relatively short period of time, it was determined that methods triangulation was likely to be impractical. This was reinforced by the circumstances of the research context, as the response rates to questionnaires tend to be lower when compared to interviews in qualitative studies.[549] In addition, the observation of the corporate governance elites carrying out their duties in their organisations was likely to be near impossible and impractical, and documents outlining the impact and response to corporate governance reforms were not publicly available. This left interviews as the sole method of data collection, and indeed previous successful studies on corporate governance in Nigeria had successfully used interviews as their sole or primary method.[550]

As a consequence, source triangulation was used instead, by interviewing sources from different organisations, different sectors, and from both sides of the company and regulator divide, as described

[544] Burton (n 479) 79; Geoffrey Walford, 'Classification and Framing of Interviews in Ethnographic Interviewing' (2007) 2 Ethnography and Education 145.
[545] Michael Patton, 'Enhancing the quality and credibility of qualitative analysis' (1999) 34 Health Services Research 1189; Norman Denzin, *Sociological methods: a sourcebook* (Routledge 2017).
[546] Patton (545) 1193.
[547] ibid 1192.
[548] ibid.
[549] Bryman (n 484) 235.
[550] (n 21).

in section 4.2. This therefore made it possible to identify the issues on which the different sources provide convergent information, for reliable usage, whilst at the same time maintaining the opportunity for each individual to express their subjective perspectives.

Another limitation of this methodology and method is the nature of the interviewer, particularly the risk of interviewer bias. This means that it is possible for the interviewer to influence the responses through the way the questions are framed, or tone the questions are asked in and other influences which may compromise the quality of the data collected. While it is impossible to measure or completely eliminate bias, measures were taken to mitigate this limitation. These included participating in interviewing training led by experts, review and approval of the interview questions by the University Research Ethics Committee, and the conduct of pilot interviews to ensure the questions were responsibly phrased. However, as this was my first interview study, there was a steep learning curve for me in the conduct of these interviews, such that subsequent interviews benefited from the experience gained from previous ones.

The final limitation considered here is that of sample size and representation, as outlined in subsection 4.2.2 above. The size of the sample of respondents used in a study may be important because, 'the bigger the sample, the more representative it is likely to be.'[551] Although an initial target of 20 respondents was set out for this project, there were ultimately 12 respondents (10 executives and 2 regulators) who participated against the backdrop of the disruption caused by the COVID-19 pandemic. This gives rise to the concerns that small-scale research projects of this nature may be unrepresentative, and data saturation may not be attained.

However, this research project does not make any claims about representativeness, and does not assert that its results are the absolute and singular narrative of responsive regulation in this context. Rather, the results expand the knowledge of how responsive regulation has worked in this context, the challenges experienced, and how the stakeholders interviewed have come to terms with this experience. In addition, and as emphasised earlier, the number of respondents is not the sole determinant of the

[551] Bryman (n 484) 198.

representativeness or relevance of a research project. Indeed, Guest and their research team evaluated the results of data they collected from 60 interviews, and upon transcription and analysis of this data, they found that they had achieved data saturation, and obtained an exhaustive understanding of the inherent themes after just the 12th of the 60 interviews was analysed.[552] This therefore implies that instructive results can be extracted from relatively small samples, especially when the respondents are experts on the topic and have been carefully selected.

4.5. Chapter Summary

This chapter has detailed the data collection and analysis strategy that was used in order to answer the questions posed by this research project. In summation, an empirical socio-legal approach was taken, using qualitative interviews. Although these interviews were initially expected to be conducted in-person during a field visit to Nigeria, the COVID-19 pandemic necessitated a revision of this design, and thus remote interviews via videoconferencing and telephone were conducted. A breakdown of the characteristics of the respondents, and the manner of their recruitment was also provided in this chapter. The interviews were subsequently transcribed, and thematically analysed with the aid of NVivo 12 software.

A number of significant issues have also been examined in this chapter, including the impact of the COVID-19 pandemic, the ethical issues considered, the challenges of access and transcription, and the limitations of sample size and reliability. The next chapter extracts the key themes and findings from the conversations with the corporate governance experts, and examines their implications for the success of responsive corporate governance regulation in Nigeria.

[552] Guest (n 499).

5. Findings and Analysis

This chapter analyses and discusses the findings of the data collection process outlined in the preceding chapter, in order to fulfil the objectives of this research project. The process of analysis and discussion herein, is facilitated by the responses provided by participants in the course of their interviews. For the purposes of clarity and increased transparency, the interview data referred to in this chapter are presented in substantial extracts within the body of the text, and are presented verbatim. Pauses, filler words and other peculiarities of transcribed speech have been included where present, in order to do justice to the participants. The pronouns 'they' and 'them' are also used to mitigate the risk of inadvertently revealing the participants' identities.

Sections 5.1, 5.2, and 5.3 of this chapter discuss the three key themes extracted from the interview data and their implications for corporate governance regulation. The respective themes are substantive improvements, polycentric regulation, and the relationship between the regulators and the regulated. Section 5.4. highlights the theoretical implication of these themes, and section 5.5. develops a path towards optimising corporate governance regulation. This chapter concludes with a summary in section 5.6.

5.1. Substance of Improvements

The question of how to assess corporate governance is quite complex to resolve, both at country and company level. An assessment of this nature ought to ensure that the strengths and weaknesses in the existing system are clearly identified, in order to inform the policy changes that may result in the improvement of corporate governance performance.[553] The challenge of assessment is made more difficult because several elements of corporate governance are unobservable to a researcher, and therefore it is often necessary to arrive at an informed judgement based on a combination of multiple sources of information. This approach is applied here in the qualitative manner outlined in Chapter 4.

[553] OECD, 'Methodology for Assessing the Implementation of the OECD Principles of Corporate Governance' (2007) <https://bit.ly/3igmvOT> accessed 11 January 2021.

Hence, informed judgements are arrived at where the corporate governance experts interviewed in this study are in agreement about elements of importance to this project.

Another source of information that may be used to adjudge corporate governance at the macro level, is the rate of compliance with the provisions of relevant corporate governance codes. Although this data can provide valuable insight, judging companies based solely on compliance with corporate governance codes is not always ideal. Under this approach, companies are either seen as compliant, or in breach of good governance practices, with no middle ground. Such an approach may present an incomplete picture of governance, and may unfairly penalise companies who have provided reasonable explanations for their departure from the code's provisions.[554]

The promotion of such an approach may also compel some companies to conform as far as possible to code provisions, thereby defeating the flexible philosophy that often underpins these codes in other jurisdictions.[555] Nonetheless, compliance rates are used here because they provide some insight into how companies have embraced regulation, and also because in the case of the SEC, their code of corporate governance operates on a mandatory basis as explained in Chapters 1 and 2. Therefore, the risk of presenting a misleading picture is minimised. In fact, it is an important indicator of what impact, if any, that the escalation to mandatory regulation on the responsive pyramid may have had on compliance behaviour.

In Chapter 4, one of the justifications for the use of the qualitative interview in this project, was that relevant documents and information about the application of corporate governance regulation were not publicly available. As a result, interviews were required to elicit some of this information from the practicing experts. This is particularly true in the case of the compliance rate with corporate governance provisions in Nigeria, as this information is neither routinely reported by the regulators nor by the

[554] Moore and Petrin (n 337) 67.
[555] ibid.

companies. This therefore formed a key line of enquiry posed to R2, the regulator from the SEC during their interview. They said:

> [T]he level of full compliance is 60% … What I mean by that, the companies that make full disclosures, that have very tight board structures, their board constitution is perfect, beautiful, and those kinds of companies, the number of companies that are that good with corporate governance practices are about 60% in Nigeria. The other companies, they try to comply to a large extent.

This approximate rate of compliance is certainly a marked improvement when compared to an estimated 40% rate of compliance last reported in 2009.[556] R2 explained this improvement, giving credit to the regulator's escalation along the pyramid of responsive regulation, by compelling compliance:

> Of course, it has improved over time, especially when we made the code of corporate governance mandatory. When we made it mandatory, they had no choice but to comply, so I would say it has improved. We made it mandatory sometime in 2014, and at that time, we had a few independent directors sitting on boards of companies, then we probably had equal numbers of executive and non-executive directors, but they've made efforts to change those things. Most companies now have independent directors sitting on their board, some even have more than one independent director now sitting on their board, and a lot of companies now have a lot of non-executive directors on their board, so there has been an improvement over time.

Although the improvement in corporate governance standards is clear based on this information, one has to question whether a 60% compliance rate is indeed a successful outcome given the ambitious objective of the corporate governance reforms. For the purpose of comparison, the UK's FRC in 2015 reported that 93.5% of companies within the FTSE 350 index comply with all but 1 or 2 provisions of

[556] Osemeke and Adegbite (n 192) 431.

the UK Corporate Governance Code, and 61.2% comply with all of the code's provisions.[557] Without transparent access to the SEC's data, it is not possible to conduct a direct comparison of compliance figures. The UK's status at the forefront of corporate governance, compared with Nigeria's relatively recent history of corporate governance regulation, also means that comparisons of compliance figures should be treated with care.

Nonetheless, given that the UK's code allows deviations by way of explanations, while the SEC's code demands mandatory compliance with sanctions to be applied for breaches, it is reasonable to expect the latter's compliance figures to significantly outperform those of the former. As this is not the case, there is evidently significant room for improvement in this regard. This outcome also raises questions about the substance and success of the application of responsive regulation in this context, which is a theme explored later in this section and section 5.4. However, it is first necessary to examine the perspectives of the other experts interviewed in this study, namely the company executives.

On the issue of the impact of the responsive developments on compliance attitudes in Nigeria since 2014, the company representatives were united in their assertion that these developments have improved governance standards of public companies. E3, an executive with more than 20 years of experience in the field, suggested that the responsive escalation by the regulator has motivated improvements:

> I think compliance has improved greatly since then, if nothing else, at least to avoid payment of fines, because as you know, one thing that came up was that whatever fine you pay, you are expected to disclose in your annual report as a company. You know, shareholders would not take it kindly … if they see you paying fines, irrespective of the amount, they take it very seriously, and it is also a reputational issue for you, even if the fine is not a lot of money, it is a

[557] Financial Reporting Council, 'FRC reports on better compliance with UK Corporate Governance Code and need for improved adherence to the UK Stewardship Code' (*FRC News*, 15 January 2015) < https://bit.ly/2PlfsV6 > accessed 4 December 2018.

> reputational issue for a company to pay fines because you are going to disclose that yes, we were fined.

Another expert, E4, added that:

> In my opinion, the implementation of corporate governance has grown from the days when it was just the multinational organisations, that had international affiliations who came with their strong corporate governance structures because they also had a reporting duty to a foreign regulator. Now it is now a phenomenon that is part of the culture of corporate Nigeria. This can be attributed to a large extent to the mandatory stance adopted by SEC and other various corporate governance regulations issued by other authorities. So, I would say that public companies now appreciate the importance of having a good governance structure, not just for the purpose of complying with regulation, but also to attract capital and investors by showing that the company takes issues of disclosure, accountability, transparency etc. seriously.

It was interesting to observe that the 'veteran' executives who had more than 20 years of experience at the time of the interview, were likely to be more effusive in their description of improvements to corporate governance regulation and practice. This may be because they remember the 1990s and early 2000s when the concept of corporate governance had yet to emerge. For example, E7 added:

> I would say there is a very heightened awareness, and a high level of corporate governance. Between the 1990s and now, it is a very positive story. Hitherto, a lot of people were not aware of the need for it, but from the early 2000s, mid 2000s, with also the coming into force of the CBN codes of corporate governance, SEC corporate governance, even with private governance, there has been a heightened awareness about adhering to corporate governance. So, I would say in Nigeria today … you can compare with any other country with what you see in Nigeria. Everybody, even private companies, is aware of the tenets of corporate governance, and the role it plays in business survival and continuity.

As discussed in Chapter 3, the successful application of responsive regulation is reliant on a number of factors, including the ability to: escalate regulatory strategies, monitor compliance, enforce sanctions, and deter non-compliance with weighty fines.[558] On the issue of monitoring, some respondents commended the SEC for their improved monitoring following the escalation of regulation in the 2014. E4 stated that: 'they monitored compliance, and they are still monitoring compliance. We always give them reports bi-annually, and should they not understand part of your report, they come in to find out, and send you queries you must answer.'

However, on closer scrutiny, the substance of the improvements to corporate governance and the SEC's monitoring capacity are questioned, because it appears the companies are only motivated to adopt the bare minimum standards required to avoid attracting the regulator's attention. E1 describes their attitude, saying that the regulator's attempt to escalate:

> becomes another bucket of compliance – rules and regulations that the company must just tick. **So, we are looking at the minimum compliance levels for our company**… they expect us to file what they call the SEC code of corporate governance reporting template and then that gets filed somewhere, and then the next time you remember to dig it up is when you want to refresh it for the following year. [559]

E3 shared the same sentiment, stating that: 'I think that there is a bit of improvement, (but) I wish we would move from a tick the box approach, to more of a culture of corporate governance', while E4 painted a broader picture of what they perceive to be the problem:

> The truth is making it mandatory has improved corporate governance, but I think the improvement is cosmetic … in the sense that they do not want to incur penalties, so they have

[558] Ayres and Braithwaite (n 397) 25.
[559] (emphasis added).

> adopted a box-ticking approach to corporate governance. How does SEC monitor corporate governance? There is a … form that companies are to file with SEC once a year. Of course, there are parts that you just answer questions, like 'do you have a board charter?' … and people would obviously say yes. You submit your form, SEC looks at it, and the few places where you write 'No', they can write you a letter asking about those areas, **so the implication is if you put down 'yes' there would be no enquiries** … What this has done is that, even though on paper it looks like corporate governance has improved, the spirit of the code of corporate governance has not really, companies … are just following the letter of the law, just ticking the box … **corporate governance standards have improved, but the improvement is mainly cosmetic**. [560]

E8 provided an illustration of the ineffectiveness of the regulator's approach to monitoring:

> I can tell you for instance that the SEC as an organisation, relies heavily on requisitioning documents from companies in their own regulatory approach … So, when SEC writes and says, 'furnish us with this document', **there is no way I can ever give you a document that would put me in trouble.** So, you then ask yourself at that point in time, how is it possible to actually be able to monitor companies, as against the rules until I apply the sanctions? So those are the issues that are there**. It is not sufficient to have rules and sanctions, if you lack monitoring capabilities, there will still be problems.** [561]

However, another expert E5, was keen to point out that the SEC was making the most of its limitations, a theme which is further explored in subsection 5.1.1:

> SEC is easy to engage with. We have over time, built relationships with them, so if along the line there are some things, we need clarity on, we engage them, and they help advise. They also

[560] (emphasis added).
[561] (emphasis added).

> do annual checks, for my organisation, they come in once a year and do some sort of audit. I don't know how it each for much smaller companies, but I doubt that SEC would have the capacity to cover them all. I'm sure they probably focus on doing 20% to give you grid coverage, because there is no way, I don't think they have the staff strength to engage on such robust audits. But yes, SEC is quite interactive. They are working, it is just that they just need to do some more engagements, and increase their scope, but the SEC is actually working.

It is worth noting that a lack of substantive compliance is a perennial challenge which frustrates the operation of corporate governance across the globe. The UK's FRC conducted its most recent review of the new corporate governance code in November 2020, and found that some companies continuously approach corporate governance as a box-ticking exercise, which manifests in formulaic statements that offer no real insight into their governance operations.[562]

Nonetheless, there is a mammoth problem here for the corporate governance regulators in Nigeria, as the company executives question the substance of the improvements observed at first glance. This means that while escalation along the pyramid of regulation may have delivered results on paper, this escalation appears to be in name only, as it has not been accompanied by an increased level of scrutiny from the regulator. The companies having realised this, appear to have in turn delivered improvements of limited substance. Essentially, despite the escalation by the regulator, a system of self-regulation still exists, and companies in reality remain free to comply in whatever manner they deem fit. This lack of follow-through is explored at greater depth in the following sub-section.

5.1.1. Challenges of Enforcement and Implementation

One of the challenges of responsive regulation noted in Chapter 3, was that it may not always be possible for a regulator to escalate to more intensive enforcement strategies. A regulator's escalatory ability in this regard may be constrained by factors such as the extent of its resources, the size of the regulated

[562] FRC, 'Reporting on the new Corporate Governance Code is a mixed picture.' (2020) <https://bit.ly/2Kzb0po> accessed 18 January 2021.

class under its purview, the ability to detect non-compliance, the expense incurred to implement regulations, and the limitations imposed by the culture and institutional environment.[563] The data reveals that these limitations are very much present here, particularly as a result of resource constraints and a limited ability to detect non-compliance. E9 emphatically explained why the ability to effectively enforce regulations is important:

> I am not trying to castigate anybody or trying to put anybody down, [but] we have a peculiar situation in this country where if you don't apply the iron fist, people don't tend to take you seriously … But to what extent has it really been so? To what extent has the SEC really taken corporate … tried to use that code and insist on and apply the penalties? If it has done so, I wouldn't know frankly speaking. We haven't been in a situation where penalties have been imposed on us by SEC, and I am not sure of companies that have been sanctioned by SEC because they have not been in compliance with the code of corporate governance.

Indeed, apart from the high-profile case of an energy company which had the trading of its shares and its board of directors suspended by the SEC, there have not been any public censures on the basis of non-compliance with the code of corporate governance.[564] That company had allegedly failed to conduct a board evaluation for five years, and had allowed the remuneration of its chief and deputy chief executive officers to be approved by the board of directors, while the remuneration of these board members were simultaneously determined by the chief executives. These were alleged breaches of Part B 14.3 and 15.1 of the SEC's code of corporate governance.

However, the suspension of this energy company was also on the basis of serious allegations of fraud, insider-dealing, and market manipulation, and as such was not based on non-compliance with the

[563] Baldwin, Cave and Lodge (n 408) 263.
[564] SEC Nigeria, 'Public Notice: Notice to the General Public on Oando Plc' (2017) <https://bit.ly/2w76mrg> accessed 21 February 2020; SEC Nigeria, 'Press Release on Investigation of Oando Plc' (2019) <https://bit.ly/32v9RUm> accessed 21 February 2020; Oando PLC, 'Oando PLC's Position on the Securities and Exchange Commission's Alleged Findings' (2017) <https://bit.ly/2Mbu2mm> accessed 11 January 2020.

provisions of the corporate governance code alone.[565] These regulatory interventions are also being challenged in the Nigerian courts in a process that is likely to take several years, and pending that determination, the sanctions imposed against the company have been lifted by the courts.[566]

When the issue of the non-application of penalties was put to R2, they said:

> As for the issue of fines, what we did was we gave them a three-year holiday, for lack of a better word. So, **we have not really enforced fines until lately**, and for those first three years, a lot of them have ensured improvement in their level of compliance. What we did for the first three years, we would call board members, company secretaries, have regular trainings with them on how to comply and what is necessary for compliance. And for those that were not complying, we decided to give them a break, we would not enforce penalties for the first three years. So, I think it is now that we want to start enforcing that, and we have not really had much because of a lot of them have tried to comply. We didn't go to tell them, we could threaten them with penalties, **but we didn't enforce those penalties,** we didn't go to tell them we were giving them a holiday from penalties, from amongst us regulators, **we let things slide for the first three years.** So, fines and penalties have not really increased, **what we are actually penalising more is non-submission or late submission**, but for non-compliance, we still try to write them and all that.[567]

Therefore, in reality, the fines or punishment, which as emphasised in Chapter 3, are essential deterrent forces for the success of responsive regulation, have not been implemented. While this was a deliberate decision from the regulator, it could be imputed to also be by necessity due to resource constraints, as R2 explains:

[565] ibid.
[566] ibid.
[567] (emphasis added).

> Well, we do not fully have the required resources, that's the honest truth, because the regulator is also trying to cut their costs. If you really want to monitor compliance with this code of corporate governance, you would have to do onsite reviews most of the time. **So, most of the time, we try to reduce our onsite visits, and we do offsite reviews, except we feel like it is totally necessary to go over to the organisation and visit …** Aside from that, the other resources we need, we have them, we don't just sit here and accept what they say. We ensure we get a lot of board documents, a lot of documents we can go through, to ensure that at least we can monitor compliance to a large extent. **But cost is a constraint, so we can't say we fully have all the resources we need** … We have had to do more onsite reviews, **but not as many as we should** … we have had to go to companies, one or two of them, but not as many as we should to be honest with you.[568]

R1, an official of the FRCN, concurred with R2's explanation of resource constraints:

> Funding is a very big problem for the Council … it affects programmes you have to do, it affects the capacity of your employees because you need to train your employees, you need to give them the skills they need to do the work, you need to bring in more people to assist the work. So, I think funding is a very major issue, not just for the council, but I think for most regulators in Nigeria.

The comments of the experts above provide a great deal of insight into the practical operation of corporate governance regulation. It goes without saying that implementation and enforcement are absolutely critical elements required for the success of a regulatory strategy, and it is clearly undesirable to have a situation where the regulators have neither the capacity nor resources to fulfil either of these elements. Enforcement in this regard requires the application of effective and dissuasive penalties when non-compliance occurs, in order to stamp out the undesired behaviour.[569]

[568] (emphasis added).
[569] OECD, *Corporate Governance Supervision and Enforcement in Corporate Governance* (OECD Publishing 2013) 12.

The inability of the regulators here to maintain effective regulation whilst under severe resource-constraints is a significant challenge for them, and this explains why inspite of their engagement of responsive escalation, the improvements reported above appear to be cosmetic. This is a mammoth problem that needs to be resolved urgently, because volumes of laws and regulations alone will not create good corporate governance and an attractive business environment, unless the means of enforcement and implementation of these provisions are also effective.[570] Ahead of the discussion on the resolution of this problem in section 5.5, section 5.2 first outlines another significant theme which impacts upon the effective application of responsive regulation in corporate governance in Nigeria.

5.2. Polycentric Regulation

In the discussion in Chapter 3, the existence of a polycentric regime where the roles of regulation are shared between a number of different regulators, was said to create a significant impediment to the smooth operation of responsive regulation.[571] These impediments may manifest in the form of functional, democratic and normative problems. Functional problems here mean the challenge of coordination, as the lack of a central authority that takes the lead on regulation may result in haphazard regulatory activity.[572] Democratic problems refer to questions about who is represented in the decision-making processes of the multiple regulators, and how to make them accountable for their actions.[573] The normative problems relate to ensuing confusion about what ought to be the ideal objectives of the regulatory system.[574] The concern is that as a result of the cumulative effect of these problems, polycentric regulation could create unnecessary complexity and fragmentation, and ultimately create doubts about the legitimacy and accountability of the entire regulatory regime.[575] In such a scenario, it

[570] Erik Berglöf and Stijn Claessens, 'Corporate Governance and Enforcement' (2004) World Bank Policy Research Papers WPS3409, 4 < https://bit.ly/3sQ5HmE> accessed 20 January 2021.
[571] Black (n 417).
[572] ibid; Walter Kickert, Erik-Hans Klijn and Joop Koppenj, *Managing Complex Networks: Strategies for the Public Sector* (SAGE Publications 2012).
[573] Black (n 417) 141; Klaus Dingwerth, 'The Democratic Legitimacy of Public–Private Rule Making: What Can We Learn from the World Commission on Dams?' (2005) 11 Global Governance 65.
[574] Black (n 417) 141.
[575] Black (n 417).

is important to understand how companies respond to these multiple sources of authority, and their competing claims to legitimacy.

In Chapter 2, Nigeria's corporate governance regulatory framework was described as being made up of a number of regulatory bodies and their respective enactments, regulations, and codes. This discussion revealed that although these regulatory bodies have demonstrated their activeness, evaluations by researchers and multilateral agencies have highlighted common structural weaknesses, not least: inadequate record keeping, weak compliance and monitoring mechanisms, overlapping regulatory remits which create conflicts, and insufficient human and financial resources. Further, there has been a high rate of activity in the issuance of corporate governance codes, with different philosophies and operated by different regulators. As a result, as of February 2020 there were six codes of corporate governance in operation, each administered by a distinct regulator, namely: the SEC's Code of Corporate Governance for Public Companies, the FRCN's Nigerian Code of Corporate Governance, the NCC's Codes of Corporate Governance for the Telecommunications Industry, the NAICOM's Code of Good Corporate Governance for the Insurance Industry, the PENCOM's Code of Corporate Governance for Licensed Pensions Operators, the CBN's Code of Corporate Governance for Banks and Discounts Houses in Nigeria.

This high level of activity was argued to result in over-regulation for some public companies in Nigeria. As commentators have pointed out, this means in certain instances, a public company would be subject to at least two codes, the SEC and the FRCN's codes, with those companies operating in affected sectors being subject to at least three different codes. Banks for instance, would have to consider the SEC, CBN, and FRCN codes in their corporate governance operations. This polycentric state of affairs was argued to result in over regulation, and as a consequence, the nature of polycentricity was a key theme that emerged from the interview data.[576] The discussion of this theme, and the functional, democratic

[576] Phillips, Amadi and Emeifeogwu (n 19).

and normative problems are grouped into two subsections in this chapter: the state of polycentric regulation, and the relationship between regulators.

However, before these discussions are commenced, it is important to note critical policy developments in corporate governance regulation in Nigeria that have occurred during the lifetime of this thesis.

As covered in Chapter 2, the emergence of the FRCN was expected to harmonise corporate governance regulation through the production of a combined code. Their first code, the National Code of Corporate Governance (National Code) for the private, public and non-profit sectors which was issued in October 2016, purported to fulfil this objective.[577] It demanded mandatory compliance with the provisions that applied to companies with the threat of sanctions, and it expressly superseded the pre-existing codes issued by other regulators.[578] However, this code was suspended following the interventions of the Federal Government, as a result of widespread discontent about the manner of the code's production.[579]

The FRCN was directed to develop a new code, which resulted in the publication of the Nigerian Code of Corporate Governance 2018 (NCCG), with the objective of entrenching best practices in corporate governance in Nigeria in order to stimulate economic growth and restore investor confidence.[580] The NCCG departed from the first National Code's philosophy, by adopting an 'apply and explain' model instead, without purporting to be mandatory and without superseding all other codes in existence. The NCCG's code requires companies to apply the governance principles in ways which suit their specific circumstances, and explain how their specific practices fulfil the code's governance principles.[581] Thus, the NCCG neither supersedes the pre-existing codes, nor does it contain conflict provisions to manage its relationship with them. The result as previously stated, was that as of May 2020, when the interviews

[577] Financial Reporting Council of Nigeria, 'National Code of Corporate Governance 2016' (2016) 4.
[578] ibid.
[579] FRCN (n 118); Babajide Komolafe 'FRC moves to develop new National Code of Corporate Governance' *Vanguard* (Lagos, January 22, 2018) <http://bit.ly/2GokN9Z> accessed 25 January 2018.
[580] Financial Reporting Council of Nigeria, 'Nigerian Code of Corporate Governance 2018' (2018) available at <https://bit.ly/2vJ9M2U> accessed 13 February 2019.
[581] ibid v.

with experts were being conducted, there were six codes of corporate governance in existence, each administered by a different regulator.

However, the NCCG in paragraph D of its introduction had stated that 'the implementation of this Code will be monitored by the FRC through the sectoral regulators and registered exchanges who are empowered to impose appropriate sanctions based on the specific deviation noted and the company in question.'[582] This hinted at some degree of harmonisation of the codes of corporate governance, without full integration as such, and this was explored during the interviews as will be discussed later in this section.

In June 2020, after the vast majority of the interviews with corporate governance experts had been completed, the FRC issued a press release stating that it had been in discussion with sectoral regulators, 'for the purpose of developing Sectoral Guidelines of Corporate Governance.'[583] The press release added that:

> All existing sectoral codes of Corporate Governance are to be withdrawn, and Sectoral Guidelines of Corporate Governance will be issued to address sector specific matters or requirements on Corporate Governance. To this end, NCCG 2018 as the National Code, would be the only Code of Corporate Governance in Nigeria.[584]

This statement clearly signified the impeding creation of a combined code as clamoured for, albeit with a range of guidelines from each sectoral regulator attached e.g., the SEC guidelines, CBN guidelines etc. The FRCN added that 'the Council's expectation is that the Sectoral Guidelines would be released once the engagement with Sectoral Regulators is completed.'[585]

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[582] ibid.
[583] Financial Reporting Council of Nigeria, 'Press Release: Guidance for reporting on Compliance with the Nigerian Code of Corporate Governance (NCCG) (2018)' (2020) available at < https://bit.ly/2MiNJsc> accessed 23 June 2020.
[584] ibid.
[585] ibid.

The SEC in October 2020 subsequently issued a press release, stating that it had now developed its SEC Corporate Governance Guidelines (SCGG), adding that 'Public companies are to mandatorily comply with the requirements of the Nigerian Code of Corporate Governance 2018 and the SEC Corporate Governance Guidelines.'[586] The guidelines were attached to the release, and were comprised of 14 paragraphs and principles that public companies are to comply with. It also stated that: 'these Guidelines are structured along the Principles of the Nigerian Code of Corporate Governance 2018.'[587] The SEC concluded its statement as follows:

> Any Company/Entity that violates the provisions of Nigerian Code of Corporate Governance and the SEC Corporate Governance Guidelines shall be liable to a fine of N500,000.00 in the first instance and a further sum of N5, 000.00 for every day the violation persists and or any other sanction as the Commission may deem fit in the circumstance.

This penalty is precisely the same as that originally prescribed for the breach of the SEC's code outlined in Chapter 1. It is also quite peculiar that the SEC is combining its mandatory stance with the flexible principles of the NCCG, merging two opposite approaches in one. Nonetheless, these developments have significant implications for corporate governance regulation, and will be analysed in depth in section 5.5.

However, the immediate impact of these developments on this thesis was that these developments were not specifically covered in the discussion of polycentricity with the interview subjects, for three reasons. First, the FRCN's policy statement was issued after all but two interviews had been concluded, and the SEC's press release came four months after the interviews were all concluded. Second, and as outlined in preceding chapters, the focus of this research project is on insights into corporate governance

[586] Securities and Exchange Commission Nigeria, 'SEC Corporate Governance Guideline and Revised FORM 01' (2020) available at <https://bit.ly/3sSiqFJ> accessed 11 October 2020.
[587] ibid.

regulation from 2014 – 2020, and as a result there is a crystallised timeline. Third, the regulatory changes are such that companies are still required to comply with corporate governance directives from multiple regulators, and as such the issue of polycentricity remains relevant.

Nonetheless, the integration of sectoral codes of corporate governance into guidelines within the NCCG was somewhat anticipated, as a result of the statement in paragraph D (as copied above) of the NCCG when it was initially released in 2019. In fact, this rebranding of codes into guidelines was explored in the interviews, as will be covered below. There is therefore sufficient coverage to proceed on the basis of the original timeline, while the developments of June and October 2020 will be discussed in section 5.2.2 and 5.5, using some of the interview data generated in anticipation of the attempted integration.

5.2.1. The State of Polycentric Regulation

As stated earlier, there were multiple codes of corporate governance that applied to public companies in Nigeria within the original timeline of this project, with some companies having to apply as many as three different codes. This raises the issue of how such companies are able to meet the regulatory burden. E4 explained the consequence as follows: '(the) increased regulatory burden has imposed added costs on companies. Costs in the sense that the complexity of overseeing and managing a corporation's business now brings new challenges from operational and compliance perspectives.'

E4 later added that:

> First, I'd say the effectiveness of corporate governance in Nigeria has been watered down by the proliferation of corporate governance regulation in Nigeria. As we're talking today, we have the SEC code, NCCG, code for financial institutions, separate codes for primary mortgage banks, microfinance banks, code for banks and discount houses, PENCOM code of corporate governance, NAICOM, the oil and gas industry is in the process of coming up with its own code. So, I think the first thing is to harmonise. It just doesn't make sense.

As covered above, the FRCN and SEC have attempted to satisfy this clamour for harmonisation, and the merits of this attempt will be covered in section 5.2.2 and 5.5.

It was interesting to note that the company representatives had each come up with their own methods and understandings of the combination of the multiple codes, essentially devising their own conflict management processes. They were aided by paragraph 1.5. of the SEC's code of corporate governance, which provides that: 'Where there is a conflict between this code and the provisions of any other code in relation to a company covered by the two codes, the code that makes a stricter provision shall apply.'[588] With regards to the challenge of complying with multiple codes, E5, the company secretary of a bank, said:

> So, there was no problem with that, SEC already said in its corporate governance code, that if you have other sectoral regulations, whichever is stricter would apply. So, the little challenge that's arisen with the new FRCN code is that they are mute on that. However, being primarily governed by the CBN, we are more in tune with them, so if there is a conflict, we would rely more on our primary regulator. So, that's where the two conflate, but if they aren't competing, and they're talking about two separate things, we implement the two. So, say for instance under the CBN code, it lists out committees you should have, and part of it was a governance and nomination committee, and they didn't say anything about the membership, so every organisation decides on how to constitute the membership. So, this new FRC code has said, executive directors cannot be on your nominations committee, so even if they are overlapping, they're still referring to subsections of the same thing, and we are implementing both, so we have these set up. We used to have an executive officer on the governance and nomination committee, but based on this FRC code, we've had to amend our composition. If there is any

[588] SEC, 'Code of Corporate Governance for Public Companies' <https://bit.ly/2XKarxs> accessed 28 December 2018.

> conflict, we will go with the CBN, but if not, we implement them. Right now, we're implementing all three.

So, in essence, these companies have developed a system which involves analysing and comparing the contents of the codes, and integrating them into one model for application. Gaps in one code are filled in by provisions of another code, and conflicts are either resolved by following the SEC's instruction to apply the stricter of the conflicting provisions, or in the case of E5, going with what their primary sectoral regulator, the CBN, demands. E8 expands on the logic as follows:

> The CBN can take my licence, they can suspend my licence, they can suspend part of my operations, they can sack my management, they can suspend my board, they can take over my bank. There is no way therefore that the general code could supersede the industry specific code.

It is possible to interpret this prioritisation of the sectoral regulator, the CBN in this case, as the companies' perception of the legitimate authority on corporate governance. Legitimacy in this light can be defined in various ways. In social terms, legitimacy refers to the social acceptability and credibility of an authority, and where present, it leads to the assumption that this authority's actions are appropriate and desirable as a result of the values held by the subjects of these actions.[589] To bring this home to the context of governance regulation, legitimacy means that a regulator could be seen as the degree to which a regulator is accepted by those it purports to oversee.[590] In the wider context of Nigeria, six regulators battle for this legitimacy, and companies have to navigate between their competing claims.

Although all six regulators can point to the legal authorities behind the exercise of their jurisdiction, the strength of such claims are in variance. The FRCN for instance, is the only body that can provide direct

[589] Mark Suchman, Managing Legitimacy: Strategic and Institutional Approaches.' 20 (1995) Academy of Management Review 571.
[590] Black (n 417) 144; Rodney Barker, *Political Legitimacy and the State* (OUP 1990).

statutory authority for the exercise of this jurisdiction, as sections 50 and 51 of the Financial Reporting Council of Nigeria Act 2011 expressly grant it the power to issue and monitor compliance with codes of corporate governance. The other sectoral regulators will no doubt point to their enabling statutes that empower them to regulate the activities of companies within their sector. Nonetheless, from the insights provided by the company representatives, it is clear that their acknowledgement or prioritisation of legitimacy is based on a pragmatic analysis, rather than on the strength of the legal authority. From E5 and E8's perspectives, they have prioritised the directive of the regulator that is most relevant to their primary business, as this regulator is likely to be able to cause the most damage to their business, if the relationship between regulator and regulated is soured. The subject of legitimacy is explored further in section 5.3 when the relationship between the regulators and regulated is considered in greater depth.

So, the burden of navigating the complexity of a polycentric system is placed solely on the companies. In so doing, these companies are resolving the functional problems that eventuate from polycentric regulation on an ad-hoc basis. Although the companies have become accustomed to this state of affairs, the resolution of these problems is by no means easy. E5 stated:

> We used to have two separate corporate governance reports, one goes to CBN, another to SEC. We are still going to see how that plays out, whether we'll still be doing a SEC report, or if the FRC's corporate governance would be the only external one. It would be a bit cumbersome if we have to render three different reports on the same thing, but using separate codes.

From the FRC and SEC's statements and guidelines subsequently issued, and as referred to earlier, it is clear that separate reports will have to be filed to each regulator.[591] It therefore does not appear that the feared and cumbersome procedures are going to be eliminated. In fact, R2 from the SEC, had warned that nothing was likely to change in practice: '… companies are still required to comply with our code, even though the [FRCN code] is already effective, they are still submitting to us.'

[591] FRC (n 583); SEC (n 586).

These multiple corporate governance reporting obligations also have to be placed in context of the wider reporting obligations of companies. E10, a company secretary in the insurance sector, complained that:

> It doesn't come easy. I have about 940 or 930 returns per annum, so … especially for my regulator, it is actually a lot … of them come around the same time. Some are monthly, quarterly, annually. So, we have a challenge … I mean 900 returns is ridiculous, and at the end of the day, it takes a lot of manpower to do it.

Some regulatory conflicts are however more difficult to resolve, especially with respect to the filing of annual reports, which have to be filed with each sectoral regulator, as E3 explains:

> For instance, you have a situation where SEC requires that financial statements or annual reports be filed by a particular date, and the operating companies have to deal with their specific industry regulator, and they're still trying to sort out their financial statements with the industry regulators and all that. So, right now, what I see is that you'll be writing back and forth and explaining and all that. So, if the regulation would come in such a way to explain what happens, if a particular operating company is having issues to sort out with one regulator before it can submit another to another regulator, **they should find laws that will resolve it amongst themselves**, rather than throwing companies back and forth, and trying to assert themselves, that one regulator is wondering whether the other regulator thinks it is more powerful or not.[592]

From E3's statement, the burden placed on companies to resolve inter-regulatory conflicts appears to be unduly onerous, and some companies are concerned about being caught in a contest between rival regulators, each attempting to assert its superiority. This relationship between corporate governance regulators, and its impact on the compliance behaviour of companies, is considered in subsection 5.2.2 below.

[592] (emphasis added).

5.2.2. Inter-regulatory Relationships

The nature of the relationship between regulators in a polycentric system can impact upon the ability of companies to meet the burden of regulation. If this relationship is fraught, then as E3 explained above, companies could be caught in the midst of a power struggle between regulators. This outcome could create substantial confusion, and negatively impact upon the companies' motivation to embrace the spirit of the regulations. The stakes are even higher here, as the FRCN indicated that the sectoral regulators would be involved in monitoring the FRCN and sectoral codes. E1 explains the problem with this approach:

> I think that is an ongoing conversation, and it also speaks to what I've said earlier that **we don't have enough collaboration between all of these regulators**. When the FRCN was launching this code, we had this huge debate as to how they're going to make the sectoral regulators responsible for ensuring monitoring compliance. It was confusing initially, and we saw the questions repeated at many fora when the FRCN kept saying that the sectoral regulators will monitor compliance.[593]

In section 5.1 above, we discussed how the experts had witnessed improvements to corporate governance standards following increased responsive regulation from 2014. However, the limited substance of these improvements was also illustrated by multiple sources. The absence of collaboration between the regulators, which manifests in conflicting regulatory philosophies, could also explain why the improvements to corporate governance were described as cosmetic. In particular, the introduction of the FRCN's codes in 2016 and 2019, may have affected how the companies engaged with the SEC's code, which was escalated with mandatory compliance and prescribed sanctions in 2014. E9, an executive of a company rated highly on the Nigerian Stock Exchange's Corporate Governance Rating System, said as follows:

[593] (emphasis added).

> **I am not so sure the SEC code now is still relevant**, with respect, because we have the code of corporate governance of the FRCN, that has come into play, and that code has adopted all the things that are in the SEC code, and even expanded it, so, if we are talking now in 2020, **I don't think we should be talking about a code that is no longer relevant.** That is my view, because at the moment the one that has become relevant is the one that came in at the beginning of last year, and just some days ago, the Financial Reporting Council sent a template to companies of the reporting format and the time for reporting, which they have sent to everybody. So, I don't know whether we should still be talking about the SEC code Rotimi at this time, because I am not sure it is still relevant, that's my view.[594]

This declaration of irrelevance comes in spite of R2's assertion that: '… companies are still required to comply with our [SEC's] code, even though the [FRCN code] is already effective, they are still submitting to us.' The SEC's statement in October 2020 that 'Public companies are to **mandatorily comply** with the requirements of the Nigerian Code of Corporate Governance 2018 **and the SEC Corporate Governance Guidelines**',[595] further illustrates the confused state of affairs, wherein some companies dismiss the SEC's relevance in favour of the FRCN, while the SEC is still trying to assert its authority.

However, according to R2, the regulators have also found ways to minimise such conflicts:

> **What we try to do is we try to work with other regulators to avoid conflicts like this**. If for example, let's use the example of NAICOM, which has its own code as well. Now, if SEC code says for example, I'm giving an example, you must have a minimum of 5 directors, and NAICOM says a minimum of 7 directors, the agreement is you go with the stricter code. So, if NAICOM has the stricter code, the company has to comply with this stricter code. **If we see**

[594] (emphasis added).
[595] SEC (n 586) (emphasis added).

> **that there is a slight shift in compliance, if the other code is strict, then we are okay with it, and if ours is stricter, they are mandated to comply with ours. We have a good working relationship with those regulators to ensure that these things are not clashing, and so far, it has been working well for everybody.** CBN also has a code, there are some things that are mandatory in those codes, we know we have to comply with those things, so whenever we see companies complying with the CBN code and we see that it is stricter, we let them be. So, there is a working relationship among the regulators, and because of that we've not had those issues per se, and when those issues arise, we have meetings with those regulators, we go to each other's offices, and we try to see how to resolve those issues.[596]

In addition, on the filing of accounts which E3 complained about earlier, R2 states the regulators are on top of such conflicts:

> No, we don't have many of them, and whenever they try, we can always call the regulator and get the issues resolved. There have been instances where we call the other regulator, and the other regulator simply says, 'why not'. For example, for NAICOM, not related to corporate governance, but for submission of financial systems, NAICOM gives the companies 6 months to submit, but NAICOM is aware that SEC requires 3 months, not as much as 6 months. **So, what they try to do is they try to expedite approval of the accounts of those companies so they can meet up with SEC's compliance. So, the working relationship amongst the regulators ensures these issues are handled.** And if there is any reason where these companies are delayed by NAICOM, we've had instances were NAICOM wrote to us asking for an extension for those companies, and as long as this comes from NAICOM with a good explanation for the extension of the deadline, we approve. So, we have a good working relationship with other regulators.[597]

[596] (emphasis added).
[597] (emphasis added).

There is however no disputing that there is a mammoth dissonance between the FRCN and SEC's approach to corporate governance regulation. As covered in Chapter 2 and section 5.2, the FRCN's NCCG code operates on an 'apply and explain' basis which gives companies the flexibility to adapt the principles of this code in the manner they deem appropriate. The SEC's approach, first detailed in its code, and subsequently in the 2020 guidelines, expects mandatory compliance, with punishments for deviations. Given that the FRCN's code states that the sectoral regulators, including the SEC, are expected to monitor and enforce compliance with the NCCG code and the sectoral guidelines, one has to question how these contrasting philosophies are going to be merged. The issue of these contrasting approaches was put to R2, who was not too concerned about the contrast:

> I wasn't surprised because people are still more tilted towards the principles-based approach of reporting, but for me, because I know from interactions with them, we know that companies will still have to make their score card submissions to us, so we shouldn't bother ourselves about it too much, because so far so good, companies are still submitting our corporate governance report forms, and they have to comply with our own. As far as they're complying with ours, if the FRC wants to make theirs principles-based, for us, we can't really be bothered for now. Where we would have been surprised if where it has to replace our code, we would probably start worrying and all that, but because we know companies are still submitting to us, for now we are not really worried about that.

There is however need for concern, because as in the SEC's statement quoted earlier, public companies are now expected to mandatorily comply with the FRCN's NCCG, a code which was originally designed by the FRCN to be flexible. This state of affairs is very confusing, although R1, from the FRCN, explains the rationale:

> What is glaring is that corporate governance should not be left for one organisation. It is something that should be tackled from multiple perspectives, but somebody should take the leadership. It is not as if the council has hijacked corporate governance in Nigeria, no, the

council has not done that, what the council is doing is coordinating corporate governance activities. That means there are other people that are doing it, but a central body should be coordinating these activities so that everything should be working towards a particular goal. Because if you look at it now, we have several codes of corporate governance. You have codes for banks by the CBN, we have a code for PENCOM, you have another code for public companies by SEC. So, you find that some organisations may be making use of 2 or 3 of these codes, like a bank might be using a code by CBN, would also be using the code of corporate governance by SEC, and at a point there might be conflicts within these codes, so if there is no proper coordination amongst all those codes, it might not give desired effect. **So, what the council is doing is to coordinate efforts of other sister regulators. The council is working with other regulators, the council understands that we cannot … that there are some aspects of corporate governance that are peculiar to banks, council cannot delve into those areas, we do not have expertise in those areas. There are some that are peculiar to insurance companies, so those ones would need to go to those primary regulators to take care of that, but everything has to be harmonised and coordinated.**

R1 also added that:

the council is not saying that all those governance regulations you have enacted before, the council is taking them down. Those things will still remain like the code for banking, the code for insurance. Those ones will remain in full force and still be administered by their primary regulators. So, the only thing that the council under this national code, is that this one will now serve as the main code, while those ones will now serve as industry-specific guidelines with those entities … So, there is no conflict. **The FRC is a very small organisation to compare with the CBN, or NAICOM, or NCC, they would have stepped it down. But there were consultations, there were discussions, peoples' input were obtained, everyone is in agreement with what is being done**, that is the different thing in this code that was not done earlier, so I don't think there will be a problem … and of course, again, the monitoring of this code is not left for the FRC. **The code will be enforced by those regulators. They will be**

enforcing it on behalf of the financial reporting council … So, the enforcement of that code would still lie with those regulators.

The above quotes from R1 explain why the polycentricity within corporate governance regulation exists, and is set to become clunkier. Over time, the regulators of corporate governance established their authority over companies within their jurisdictions, and now they appear to be reluctant to relinquish these powers. Although the obvious solution would be a simplified structure with a single corporate governance framework, the political machinations and power struggles between the multiple regulators involved have resulted in the compromised solution outlined earlier. While this compromise may satisfy the needs of each regulator to remain relevant, the outcome appears to be unwieldy and confusing, and is likely to frustrate the compliance activities of companies.

The design of this compromise is such that there will eventually be one overarching code – the NCCG, while the remaining five sectoral codes – SEC's, CBN's, NCC's, NAICOM's and PENCOM's will become guidelines attached to the NCCG. Companies will be expected to apply the NCCG and whichever sectoral codes that apply to them, and report on their compliance to the relevant regulators. For instance, his means that a publicly listed insurance company will apply the FRCN's NCCG, and the guidelines issued by the SEC and NAICOM, and report on compliance to all three regulators. The complexity remains plain to observe, particularly in light of the difference in philosophies.

The situation is made even more complicated because, of the sectoral regulators, only the SEC has published its guidelines to be attached to the NCCG. E2 explains: My problem now is in my sector (insurance), the guidelines are yet to be passed, it was sent out for comment and we sent our comments, so we've prepared, we are almost like anticipating compliance, **because there is no point for example in choosing committees when something is yet to be passed**.'[598] The confusion and delays are

[598] (emphasis added).

therefore hindering E2's ability to constitute board committees with confidence, which is just one example of the negative outcomes that this unnecessary complexity can create.

E4 questions whether the FRCN's complicated intervention is necessary:

> The thing is, the NCCG has said that the implementation of the code will be monitored by sectoral regulators and stock exchanges empowered to impose sanctions based on the specific situation in question. **So, as it stands right now, the FRCN code has not changed anything, because if the FRCN is stating that its implementation will be monitored by sectoral regulators, the truth is it is still business as usual.** So, companies still comply with the code of corporate governance in their industry, however, where their own code is silent on an issue that the NCCG addresses, then they comply.[599]

However, the polycentricity is not entirely negative, as E5's statement earlier, explained how one regulator's provisions can complement those of other regulators. E5 said:

> So, say for instance under the CBN code, it lists out committees you should have, and part of it was a governance and nomination committee, and they didn't say anything about the membership, so every organisation decides on how to constitute the membership. So, this new FRCN code has said, executive directors cannot be on your nominations committee, so even if they are overlapping, they're still referring to subsections of the same thing, and we are implementing both, so we have these set up. We used to have an executive officer on the governance and nomination committee, but based on this FRCN code, we've had to amend our composition. If there is any conflict, we will go with the CBN, but if not, we implement them. Right now, we're implementing all three (CBN, FRC and SEC).

[599] (emphasis added).

Nonetheless, the above discussion illustrates how the multiple approaches of regulators in this polycentric system compromises the overall efficiency of corporate governance regulation. The discussion in section 5.3 below focuses on the impact of the relationship between the regulators and the regulated companies.

5.3. The Relationship Between Regulators and Regulatees

During the discussion in Chapter 3 on responsive regulation, one of the critical factors emphasised was the quality of the relationship between the regulator and regulatees. As covered in that discussion, responsive regulation requires regulators to combine both deterrence and persuasion as strategies, in order to motivate the regulatees to comply substantively with the established rules. A crucial part of this combination is the ability to determine when to escalate to more punitive means of regulation, and when to deescalate. A strong relationship between the regulator and regulatees is therefore required, if the regulator is to acquire the information upon which to base its decision to escalate or deescalate.

The stakes are high, because escalation at the wrong time may damage the relationship between the parties, thereby destroying goodwill and adding further complexity to the regulator's task.[600] A weak relationship may also result in failure of the regulatory strategy, as the regulated are not likely to understand the objectives of regulation without seamless communication.[601] Therefore, there needs to be a free flow of information and dialogue between both parties, in order to ensure that the signals that guide regulatory decisions are accurately understood.

In an ideal scenario where the parties maintain this strong relationship, the regulator ought to able to regulate at a persuasive level of the pyramid of regulation, with the significant benefit of reduced costs of regulation and a lessened burden on the regulatee. This scenario is strengthened where the regulated are also well aware of the regulator's ability to escalate to severely punitive measures of regulation.

[600] (n 413); (n 414).
[601] ibid.

It was therefore necessary to explore the nature of the relationship between public companies and the regulators of corporate governance in Nigeria. In the word frequency report in Figure 5.1 below, which was generated from the interview data, the word 'government' features prominently. This frequency is not entirely surprising, given the scale of governmental influence in corporate governance, particularly through the roles of the six regulators as described earlier. The regulators therefore play an outsized role in the perception of corporate governance by the experts interviewed in this study.

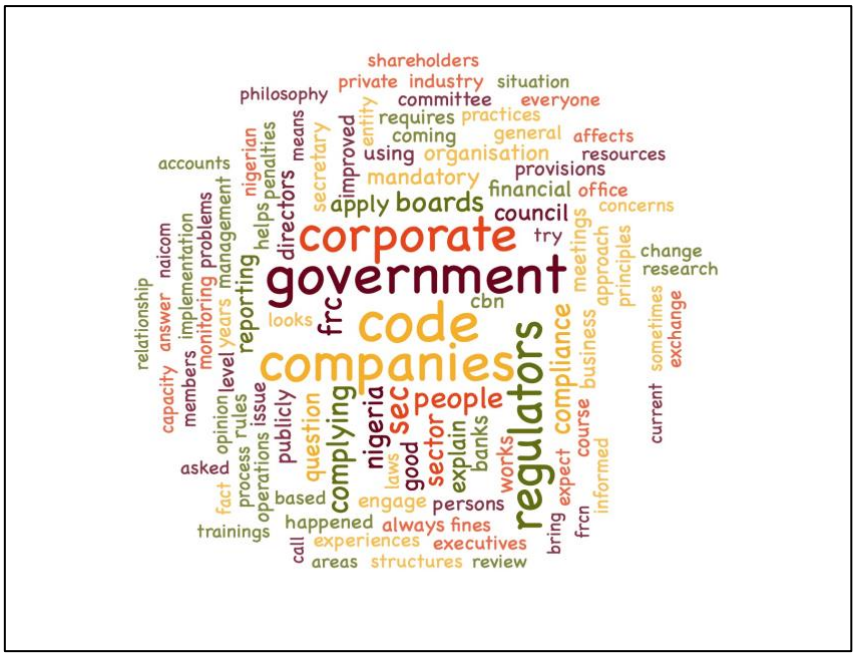

Figure 5.1*: Word Frequency Report (NVivo)*

One strong theme that emerged from the data, was a common mistrust of regulators, which manifested in their concerns about abuse of power. The key driver of this theme was the FRCN's intervention in corporate governance in 2016, when it issued the National Code of Corporate Governance pursuant to its objective to harmonise and unify the existing sectoral codes in Nigeria.[602] However, this code was a combination of three sectoral codes: the Code of Corporate Governance for the Private Sector, the Code of Corporate Governance for the Public Sector, and the Code of Corporate Governance for Not for Profit Organisations.[603] The Private Sector code applied to all listed and unlisted companies, and all

[602] Financial Reporting Council of Nigeria, 'National Code of Corporate Governance 2016' (2016) 4.
[603] ibid.

private companies that were holding companies or subsidiaries of public companies.[604] The most controversial of the codes was the code for the Not for Profit Organisations, as it introduced term limits for heads of these organisations, requiring current heads to step down.[605] The FRCN's exercise of its powers in in this manner subject to much criticism from stakeholders. Some stakeholders accused the FRCN of being too heavy handed in the discharge of its functions, and these criticisms ultimately led to the dismissal of the FRCN's executive secretary, and the reconstitution of the FRCN's board in 2017.[606]

E6 shed some light on the controversy:

> The first one was terrible. It was really terrible, because they took the law into their hands … not giving anybody the opportunity to even discuss it, the provisions were too stringent, and they more or less wanted to do it all alone, and lord it on the people who are supposed to comply with it. Such is not done in a democracy. Not even the military, when they bring decrees, just impose them like that. That was the kind of thing they wanted to do, so it met with a lot of resistance from the shareholders, the banks, from even individuals and other businesses.

E7 also added that:

> I want to be mindful of my language, it was just a power grab … Normally you're supposed to advertise, ask for comments, but nothing, it just came up. Of course, the person who was occupying the positions was … well like they say, you only the character of people when they get power. It was a horrible time, I must tell you that it was a terrible time. Most unprofessional, it was as if it was the military rule, it was just very bad.

[604] ibid.
[605] (n 19).
[606] ibid; FRCN (n 118).

E9's contributed as follows:

> Well, the process that brought out the first code was not the right process in the first place. If you remember, the committee was set up by the then Honourable Minister, so how come when the work of the committee was done, it wasn't the Honourable Minister that signed off the code, but it was done by the then executive secretary? **So, the approach and process wasn't done professionally, and it's a shame because you are coming up with a code talking about corporate governance, and then in the process of issuing the code itself, they didn't follow proper governance, so you just begin to wonder what are we doing here?** Even the council as at then, had not been properly constituted, so it was just one man who ran the council and everything, and when the debate was going on, some of the provisions that were in the code should have been subject to public debate … So, everything was done in a hurry, haphazardly, unprofessionally done, it was such a shame. [607]

The following quote from R1, an FRCN official, provides an internal perspective:

> Actually, with the 2016 code, what happened was ... it's not that the code was not good in essence, but I think **there wasn't much in the way of consultation. People were not carried along the way they were supposed to be**. If you look at the ideas of that code, the code was truly mandatory unlike this one [NCCG] now, there was that force behind that code, and it did not go down well.[608]

Analysing the 2016 developments through the lens of responsive regulation, it appears as though the predictions in Chapter 3, and as recapped earlier in this section, eventuated. The FRCN determined that the standard of corporate governance was poor, and unilaterally decided to escalate to mandatory regulation without developing a relationship and consulting with the regulated companies. This resulted in a breakdown of trust and the eventual failure of that regulatory attempt.

[607] (emphasis added).
[608] (emphasis added).

However, the respondents also agreed that the FRCN has since made significant improvements to their relationship management skills, as E6 explains:

> Under the new code, it is friendlier, they followed the process, there were drafts, they called for comments, it was discussed, and they went around the regions, they travelled through Nigeria to different regions to discuss it at different fora. People made comments, not just once, they came up with two different drafts. The first time, and then came back with what they gathered, and we discussed it again before they came up with this code. So, to some extent, they followed the process, they carried every stakeholder along. So, this is a more acceptable code, than what they did before, even though it is not in a perfect state, but it is a more acceptable code.

Relationship management in this manner is so important because it creates a shared sense of ownership, which builds legitimacy and ensures companies buy into the regulatory philosophy. This means that companies are less likely to rebel against a process that they were part of, as reflected in E5's statement:

> They were actually quite engaging, they reached out to key players for opinions about how to proceed, to analyse the document they wanted to work on, that was really smart of them, because when everybody is joined in the creation of the document, there are going to be fewer chances of being misinterpreted.

E1 sheds more light on the improved relationship:

> We've seen the FRCN has an open-door policy. You can literally pick up the phone and talk to them, and engage them. [During] The last dispensation, for you to even be able to go to the FRCN to protest or challenge any alleged infraction, you would need to pay an amount for you to have a meeting with the key officers in the unit. And we said that was really punitive, and there was a large public outcry against that as it being very counterproductive, and a case of

> double jeopardy. So, you got fined, you're trying to argue your way out of it, and then you have to pay for you to even talk to your regulators. As corporate citizens your companies pay tax, so why should you pay to seek audience with a regulator that's supposed to be encouraging you?

When asked about their organisation's management of relationships with companies, R1 was also eager to emphasise the improvements made, however, they also suggested that the onus is on the companies to approach the FRCN:

> I would say the relationship with the entities we regulate has improved, and people will say the new FRC has improved a lot, because we have new management and board members. They have a different idea from the past management, so there have been lots of engagement. Even before this code was issued, some entities had come to the council to ask for genuine waivers, and we have listened and granted such. The council is always open, but it's just that when you don't approach the council, you won't know, but for entities that have had the courage to come to the council, they have been very happy about that. We listen if you have any challenge, so in terms of our engagement with our regulatees, auditors and companies, I think it has been improved significantly. It is no longer the case where the council will fine you and all that, we'll still fine, but it is no longer our primary objective.

However, it is unfortunate that the FRCN had to go through the controversy of 2016 in order to learn the value of relationship management. From one perspective, it is possible to argue that the experience has left the FRCN so chastened, that they have abandoned the objective of creating a truly single framework of corporate governance. This outcome is a key enabler of the polycentricity in corporate governance regulation, which as discussed in section 5.2, is a significant spoke in the wheel of good governance standards. E10 elaborates on this point as follows:

> But when they went and came back with the revised code, **I think the code was too watered down that it almost became powerless.** So, before this Nigerian code came out, we had a

> number of conflicts between SEC code and then your sectoral codes, so **we were hoping that FRCN would come out, harmonise everything** and be like the mother code together with the CAMA. So, where there's a conflict, the FRCN code or the Nigerian code would prevail. But we were surprised that wasn't what happened … at the end of the day, it has actually watered down the powers … they are not being as strong as they should have been. That's just my opinion.[609]

Moreover, the FRCN's newfound process of engagement does not always satisfy concerns raised by company representatives, as E1 explains:

> We have realised that they do not reflect most of our comments, so they go away from those sessions giving us the impression that they are going to go back and do further reviews to see how they can reflect our objections, or the proposals from the industries, but that is not always the case. We always see that they come back, the rules are now released as the full substantive regulations and we don't see any of our concerns reflected.

In addition, E7 remains scarred by the experience of 2016, and is concerned that the potential for future abuse is still present:

> When you make provisions, but you don't realise the implications of such powers being in the hands of somebody who does not understand the ethos of civil behaviour and relationship management, we will have the experience we had that time. So, I would say the approach is much better now, but as far as I am concerned, because of the provisions of the law that are still there, those things can still happen. The fact that the person occupying today is reasonable and everything, we must not let the operations of law be dependent on the temperament of the occupier.

[609] (emphasis added).

With regards to the SEC, some of the respondents were quick to point out the positive relationship that exists between them, albeit with room for improvement. E5 had this to say:

> SEC is easy to engage with. We have over time, built relationships with them, so if along the line there are some things we need clarity on, we engage them, and they help advise … it is just that they just need to do some more engagements, and increase their scope, but SEC is actually working.

However, other respondents like E4 think the SEC is not doing enough to engage substantively on issues such as the mandated size of boards:

> I would just fault them because they don't listen all the time. So, if my company has breached a provision of the law or the code, and there is a good justification for that, they're not listening. For example, … maybe we have four or five directors and you're saying we're supposed to have six, and we're telling you that as far as we are concerned, we have the sufficient number of directors that'll help us manage our operations. So, you just have this attitude from the regulators that they are not listening to you, they just want you to comply, it doesn't matter, and that of course engenders the box-ticking approach.

It would be remiss to omit the consideration of the impact of COVID-19 on the regulators' responsiveness. On this point, the company executives were in common agreement that their relationship with their corporate governance regulators has grown stronger throughout the pandemic. E7 was effusive in their praise:

> On this issue, I must tell you that all the regulators, every single one of the regulators has risen to the challenge of this COVID-19 pandemic. Everyone has been supportive, understanding. All of the regulators, I give kudos to. This was one time that people understood that there is an

> exigency, and we must be able to address it. Every single one of the regulators … the SEC, FRC, CBN … every one of them, everybody. They really cooperated to keep things going. For me, this revealed that the challenge is not a question of understanding, it is a question of will and desire. This time, everyone was in alignment, both the operators and regulators … For me, it was a high point of regulatory performance in Nigeria.

E8 added that: 'some of the regulators have been responsive to give guidelines to make things happen. Last week, we had a meeting with the CBN that was virtual, and we are leveraging on technology to keep things moving.' From the regulators' perspective, R1 admitted that the pandemic had resulted in increased efficiency:

> our output has really increased in terms of the number of meetings we hold, because sometimes you can barely hold two meetings in a day, and now we can hold like three or even four. So, [video conferencing technology] has really helped. But in all, there is still that gap, in the sense that everything is not together. Sometimes you might need some documents and you don't have access to the office to get the documents, just like the document you sent to me that I was supposed to fill and send to you. I would say the pandemic has startled us. One, it has not really impacted our level of working negatively, because the entities we even work with, over the course of the week I told you I was very busy talking to many entities, **and they were surprised by the speed with which we respond their requests, these are meetings that usually take time to schedule, months and weeks, but within days everything is finalised.**[610]

However, E1 sounded the alarm that companies may struggle to meet their corporate governance obligations:

[610] (emphasis added).

> A lot of companies are going to struggle with reporting compliance next year. What we are reporting now is our 2019 compliance and that may be easy because we didn't have covid last year, so you probably won't have many excuses for non-compliance. But from next year, yes, we will be proactive enough to engage the FRC to say look we were able to this for 2019, but obviously we are going to have gaps for 2020 because of the obvious issues and the pandemic that just came upon us.

R2 outlines how some companies are already using the pandemic to justify their non-compliance:

> Some companies are already taking advantage of the situation …To give you an example, two days ago, a company reported that the reason they didn't have a proper board constitution was because in the process of trying to appoint new members onto their board, the COVID issue struck, and it affected the committee responsible for appointing new members. That is their excuse, but in my opinion that is not good enough, because in the midst of this pandemic, companies are recruiting, work is going on, they can meet virtually, discuss virtually, and these committees do not have more than four members, they can meet in the office and practice social distancing, and they can still recruit if they want to. But the COVID situation has given them an excuse to reduce their level of compliance.

R1 however says genuine cases will not be penalised:

> But if you have made efforts, and there are genuine concerns, challenges that are affecting not just you but other organisations, if you say because of COVID you cannot comply, but organisations that are of the same size as you in the same industry are complying, I don't think the council would accept that. But definitely, the impact of covid, yes, we are taking that into consideration, but using it as an excuse not to comply … except it is a very genuine issue that is affecting not just your company but maybe the entire industry, then the council can be able to listen to such excuse.

The proactive response of the regulators to the pandemic is certainly commendable, and the company executives have expressed their optimism that the increased efficiency will be retained in the future.

While there is evidently more work to be done, the area of engagement is one where the relevant corporate governance regulators have made significant improvements within the timeline examined. Although this has resulted in increased levels of satisfaction, some of the respondents remain wary of the potential for abuse of regulatory power, and the regulators have some way to go to eliminate this level of distrust. The following section now turns to the application of the theoretical discussion in Chapter 3 to the findings outlined above.

5.4. Theoretical Application

The discussion here is covered within two subsections. Subsection 5.4.1 analyses this chapter's findings in the context of the theories of corporate governance theories outlined in Chapter 3, while subsection 5.4.2 evaluates the implication of these findings through the lens of responsive regulation.

5.4.1. Consideration of Corporate Governance Theories

In Chapter 3, four corporate governance theories were identified as being relevant to this research project's objectives, namely: agency theory, stakeholder theory, and institutional theory. Of these, agency theory was identified as the dominant theory which underpins the framework for corporate governance in several jurisdictions. The primary goal of agency theory in corporate governance regulation was identified as the protection of the shareholders' interests, against the moral hazards and risks created by the separation of ownership from control.[611] This goal was argued to be best achieved

[611] Carney, Gedajlovic and Sur (n 227).

through the creation of rules, incentives and monitoring mechanisms that align the motivations of company management with the interests of shareholders.[612]

As a consequence, agency theory's concerns are reflected in the codes of corporate governance used in several jurisdictions, through provisions recommending: the institution of a board of directors largely comprised of non-executive directors to supervise the activities of the executive management; the appointment of board committees composed of independent non-executive directors to handle the nomination, remuneration and audit responsibilities of the board; and, the frequent use of formal board evaluation procedures.[613] The codes of corporate governance in Nigeria also embody these provisions, which is not surprising when due consideration is given to the close ties between Nigeria's legal system and that of the UK, as expatiated upon in Chapter 2. The surprising element has been the demand for mandatory compliance with these provisions by the SEC and FRCN in 2014 and 2016 respectively, before the FRCN withdrew from this approach in 2019.

Therefore, while some commentators have described agency theory's assumptions of human behaviour as being cynical, one could argue that these regulators' assumptions are even more so.[614] Not only do they believe that the self-interest of company managers is likely to prevail in the event of a conflict with the interests of their shareholders, but they are also convinced that the countermeasures included within the provisions of codes would be ignored or explained away, if not enforced with the threat of sanctions. This is reinforced by R1's statement that:

> I doubt people would want to do it if it's not mandatory. I still propose that corporate governance, for now, at this stage that we are, should be mandatory, because even the ones that are made mandatory, people don't even comply, so what then happens to the one that is not mandatory? So, I think it should be mandatory.

[612] Turnbull (n 213).
[613] (n 234).
[614] Turnbull (n 213).

R2 concurred with this assessment, saying:

> The reasoning was we were looking at the environment we operate in, the economic and political environment as well. Nigeria as a country is peculiar, in the sense that, for lack of a better word, the only language many of these people understand is force, do you understand? If you give them the opportunity to say, 'you may do this', they would rather take the simpler route. So, what works best here is mandatory regulation in our opinion. We feel mandatory regulation works best. So, it was a decision that came as a result of the fact that we looked at the economic environment, and we realised that people would rather want to save costs, they were looking at the short term instead of the long term. The peculiarity of our environment just makes mandatory compliance better for us. That was why we chose mandatory compliance.

This assessment is also a strong repudiation of stewardship theory's perception of managers as honest stewards, who are sufficiently motivated to cater to the collective interests involved in a company's business activities.[615] Stewardship theory's recommendation that managers should not be subject to much governance oversight is also resoundingly rejected, and an increased burden of regulation is preferred instead. This is despite the general trend of concentrated ownership of public companies in Nigeria, as is common in other emerging markets.[616] The argument that stewardship theory is practicable in emerging markets where shareholder ownership is concentrated, and the major shareholders are represented in the company's managerial structure was outlined in Chapter 3.[617] This argument is based on the belief that since the managers are either majority shareholders or direct appointees of such shareholders, they are more likely to adopt a stewardship stance in the performance of their functions. However, it is clear that the SEC and the FRCN do not believe in this proposition.

[615] (n 255).
[616] Young and others (n 250); Jerry Kwarbai, 'Concentrated Ownership Structure and Audit Quality: New Evidence from Nigeria' (2020) 5 European Journal of Business Management and Research.
[617] (n 279).

There is however strong evidence which points to the influence of stakeholder and institutional theories on the regulators' decisions to adopt responsive regulation. As stated earlier, stakeholder concerns are of significant relevance in emerging markets where large companies have outsized impacts on the society and economy, and as such great interest exists in the activities of this companies. This was reflected in the Nigerian SEC's mandatory code of corporate governance, which required companies to consider the interests of stakeholders including employees, host communities, consumers and the general public.[618]

Corporate malfeasance could therefore have devastating impacts on the livelihoods of these stakeholders, and may provide a reason for the regulators to introduce mandatory compliance. Pfeffer's research supports this conclusion, as it found a correlation between the level of regulation in an industry, and the level of external stakeholder interests, such that the more regulated an industry was, the more likely it was to find more external non-executive directors on the board in order to reassure regulators, creditors, and other stakeholders about the safety of the companies in that industry.[619] Similarly, the respondents in this study pointed to the history of failures and fraud at large financial institutions in Nigeria as a justification for the introduction of mandatory compliance. E6 said: 'First and foremost, I won't say it is draconian, given the history and what has happened to banks in the past.' E4 added that:

> Personally, I would say that mandatory compliance works for Nigeria, the business environment is peculiar. We are coming from a point where those entrusted with corporate governance in the past have acted with impunity, so it is not a surprise that SEC took this approach. Let's take the cases in the past of Lever Brothers, Cadbury plc, banking scandals: Union Bank, Oceanic Bank … the most recent was the failure of Diamond Bank, thankfully Access Bank was able to acquire it quickly … So, if you look at the totality of these issues, and the fact that corporate governance is still novel here, if you don't make it compulsory, we would

[618] SEC, 'Code of Corporate Governance for Public Companies' 14 <https://bit.ly/2XKarxs> accessed 28 December 2018.
[619] Pfeffer (n 305).

> not be able to have good companies that'll appreciate it. So, for now, in my personal opinion, mandatory works for Nigeria.

Institutional theory's admonition for the consideration of institutional influences on corporate governance also finds support here, as seen in the quotes from R1, R2 and E6 above, wherein they suggested that Nigeria's peculiar institutional factors necessitate mandatory compliance. E2 also reiterated their assessment: 'in an ideal scenario, ideally, it [corporate governance] should not be driven by penalties. But I also think that when one looks at Nigeria and how it works, it is almost like we need a push, a whip or something, so it has its benefits.' E3 added that:

> So, we realised that it wasn't an 'either or' situation, **as long as it was 'comply or explain', they would always explain why they didn't comply**, and stuff like that … I wish we would move from a tick the box approach, to more a culture of corporate governance … **But, in the absence of that culture being prevalent, it is important for the stakeholders to have a form for insisting compliance**.[620]

Further, as covered in Chapters 2 and 3, the corporate governance experience in Nigeria includes weak legal institutions, and conflicts similar to the principal-principal conflicts detailed by institutional theory, such that Nigerian regulators have introduced provisions in corporate governance codes which restrict the percentage and number of individuals of the same family or group who may participate in the ownership and control of companies. There is therefore a strong sentiment that the combination of environmental factors militate against the voluntary adoption of governance standards. The rest of these factors were also covered in Chapters 2 and 3, and Adegbite and Nakpodia have explored the range of institutional considerations at play.[621] Indeed, from conversations with the company representatives, there was a feeling that they would not comply with certain provisions if given the choice, for example, those concerning independent directors and board evaluations. E1 for instance, said:

[620] (emphasis added).
[621] (n 21).

> There is a requirement for us to do board evaluations annually, and once in three years you are expected to use an external consultant for the same exercise. For some of our companies, especially the multinational companies, have a very strong framework for board evaluations, and for those who have such opportunity to leverage on whatever your parent company is doing, why would you want to spend extra money bringing in an external consultant?

E7 also expressed their displeasure with provisions mandating the presence of independent directors on the board of companies:

> How do you form a company, or you are the owners, and then you go and bring all independent directors, and they'll be more than you? Does it make sense? … Even today, to find independent directors is such a challenge, because a lot of people have affiliations. So, you can then imagine a rule that says we should have more independent directors than non-executive directors … That provision today, you are saying that a man builds his business, and then, you must have people who don't have a stake being the ones that are … that just falls against every tenet of common sense.

It is therefore possible to appreciate the experts' shared concern that corporate governance compliance could be compromised if the element of compulsion is taken away.

In summation, although the review of the theories of corporate governance points to the strong influence of agency theory on the mode of corporate governance regulation in Nigeria, the findings suggest that stakeholder factors and a consideration of institutional influences have resulted in a dominant idea that the mode of regulation requires escalation, if good corporate governance standards are to be truly adopted. The focus now turns to the practical results of the application of responsive regulation by these regulators.

5.4.2. Application of Response Regulation

In Chapter 3, the critical issue of regulation, specifically what form regulation ought to take, was presented. Regulation was described as existing within a continuum comprising of no regulation, self-regulation, co-regulation, and state regulation.[622] In the context of corporate governance, this issue is often presented as a choice between self-regulation, such as contemporary codes of corporate governance, and state-regulation, for example the US' Sarbanes-Oxley Act 2002, as the core element of the regulatory architecture.[623] The ensuing discussion about these strategies concluded that adopting extreme positions on either side of this continuum is undesirable. Instead, the use of self-regulation, which offers voluntary adoption of governance standards but imposes mandatory disclosure, was described as the favoured solution in contemporary corporate governance discourse. However, following the rejection of this form of self-regulation by the SEC and FRCN, responsive regulation was introduced as a means of combining the different strategies in order to achieve the policy objectives of corporate governance regulation.

Responsive regulation theorises about how to combine the forces of both punishment and persuasion in order to extract substantive compliance from regulatees.[624] Regulation in this light was presented as occurring as a pyramid with persuasion at its base, and punitive sanctions at the peak, such that each succeeding level of the pyramid increases in order of severity and punishment. In the context of industry regulation, the pyramid was described as comprising of self-regulation at the base, with succeeding levels of enforced self-regulation, command regulation with discretionary punishment, and command regulation with non-discretionary punishment at the peak. When implementing this strategy, the recommended advice was that regulation should begin from the base, and only when regulatees fail to comply voluntarily, should the escalation to more punitive measures take place.

[622] (n 332).
[623] Aguilera and Cuervo-Cazurra (n 334).
[624] Ayres and Braithwaite (n 397).

In the context of corporate governance, the use of corporate governance codes with mandatory disclosure obligations, was ascribed to the level of enforced self-regulation on the responsive pyramid described above. Command with discretionary punishment was then described as a level where the regulators can choose a range of punishments such as fines and temporary suspensions, while non-discretionary punishment entailed heavy measures such as being banned from the industry.

The success of this model of regulation was described as being dependent on the regulator's ability to escalate through the pyramid, and the existence of a peak strong enough to deter the worst offenders. Other factors mentioned included the health of the relationship between regulators and regulatees and the impact of polycentric regimes. The relationship between the parties is important, because regulators need to appreciate the reality within which their regulatees operate in order to anticipate their compliance behaviour. Regulators therefore have to commit significant resources, and conduct regular inspections in order to acquire this depth of knowledge. Polycentricity was described as rendering the use of responsive strategies ineffective, because the presence of multiple regulators would create interference and confusion amongst regulatees.

The selection of responsive regulation in the context of Nigeria's corporate governance, was apposite because the regulators first introduced a system of enforced self-regulation, or persuasion under pyramid of regulation. However, when this was deemed to be ineffective, the regulators escalated to a more punitive strategy, just as advocated by the principles of responsive regulation. In the case of the FRCN, this was followed by a de-escalation following negative reception of its policies. The objective of the data collection exercise was therefore to examine how these policy changes were applied in practice, whether the regulators were indeed able to escalate their efforts, what impact, if any, polycentricity may have had, and other challenges encountered.

Whereas the expectation from the preliminary analysis was that the regulators, particularly the SEC, had escalated from enforced self-regulation, to command regulation with discretionary punishment, the findings of sections 5.1, 5.2 and 5.3 suggest otherwise. Although the participants collectively agreed

that there has been a notable improvement in the quality of corporate governance, they also assert that this improvement is largely a result of the adoption of box-ticking approaches.

The treatment of corporate governance as a process of ticking the box is certainly not unique to public companies in Nigeria, in fact, it is a problem commonly reported in several jurisdictions.[625] Nonetheless, its manifestation here is made possible by the dissonance between the regulator's declared strategy and the reality of its application. Whilst there was a purported escalation to a command system, the method of implementation and monitoring remained at the level of enforced self-regulation, which places major reliance on each company's attitude to corporate governance. In this light, the results of purported responsiveness here are inadequate, and the capacity of the regulators is found wanting. By the regulators' admissions, they do not conduct thorough investigations and site visits as they ought to, they rely heavily on self-disclosure, and they choose not to impose fines on non-compliant companies. They therefore lack the escalatory attributes required in responsive regulators. The reality is therefore more accurately represented in Figure 5.2 below.

However, if the results are to be adjudged based on the reality that system has remained at the level of enhanced self-regulation without additional regulatory scrutiny and monitoring, then the outcomes can be described as successful within this narrow perspective. The regulators set out to improve corporate governance standards, and despite the severe limitations discussed, they have satisfied that, with a 60% compliance rate compared to 40%. As covered in the discussion in section 5.1, a 60% compliance rate does not compare poorly against the UK's 61% rate, however, this is qualified as the mode of calculation of the SEC's figures has not been openly disclosed.

[625] Moore and Petrin (n 337).

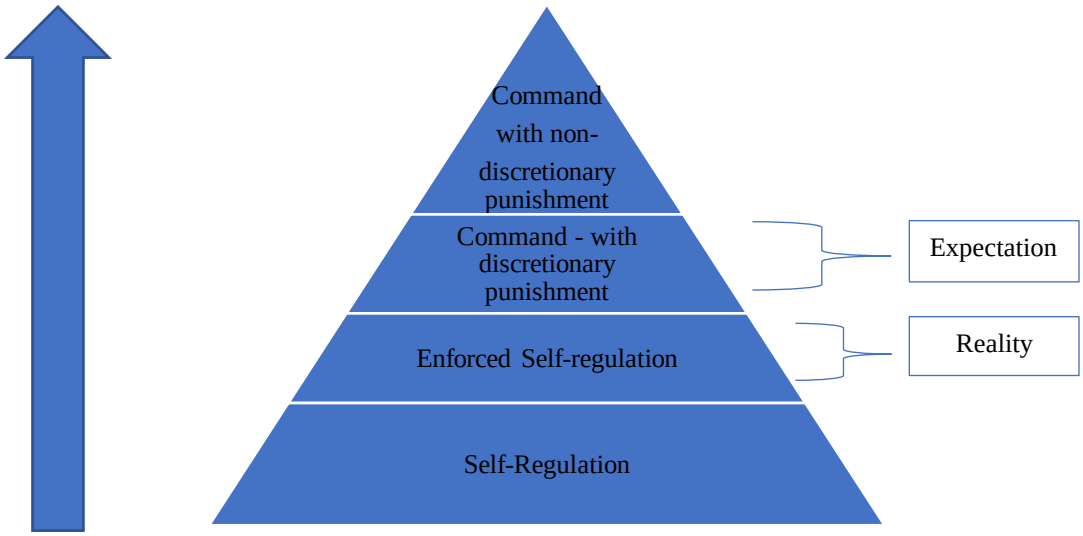

Figure 5.2: *Practical Pyramid of Regulation*

The SEC's October pronouncements outlined in section 5.2, also suggest that they do not intend to back down from this approach of escalation, even though they are well aware of their limitations. The institutional limitations discussed above are likely to be a factor, after all, to paraphrase R1, if some companies are not in full compliance with your current mandatory provisions, why would you expect them to comply with voluntary recommendations? It is therefore likely that SEC has continued with the public declaration of escalation, whilst privately deciding not to apply sanctions. A reminder of R2's statement:

> what we did was we gave them a three-year holiday, for lack of a better word. So, **we have not really enforced fines until lately**, and for those first three years, a lot of them have ensured improvement in their level of compliance. What we did for the first three years, we would call board members, company secretaries, have regular trainings with them on how to comply and what is necessary for compliance. And for those that were not complying, we decided to give them a break, we would not enforce penalties for the first three years. So, I think it is now that we want to start enforcing that, and we have not really had much because of a lot of them have tried to comply. We didn't go to tell them, we could threaten them with penalties, **but we didn't enforce those penalties, we didn't go to tell them we were given them a holiday from**

> **penalties, from amongst us regulators, we let things slide for the first three years.** So, fines and penalties have not really increased, what we are actually penalising more is non-submission or late submission, but for non-compliance, we still try to write them and all that.[626]

Despite the lack of substantive enforcement, the escalatory language was sufficient to inspire improvements, particularly through the introduction of more independent directors on companies' boards:

> We made it mandatory sometime in 2014, and at that time, we had a few independent directors sitting on boards of companies, then we probably had equal numbers of executive and non-executive directors, but they've made efforts to change those things. Most companies now have independent directors sitting on their board, some even have more than one independent director now sitting on their board, and a lot of companies now have a lot of non-executive directors on their board, so there has been an improvement over time.

It may therefore be that this regulator is aware of its inability to escalate effectively, however, it also needs the threat of escalation to drive the adoption of good governance standards. The result is the amendment of the pyramid of regulation to include 'light-touch escalation', as in Figure 5.3 below.

[626] (emphasis added).

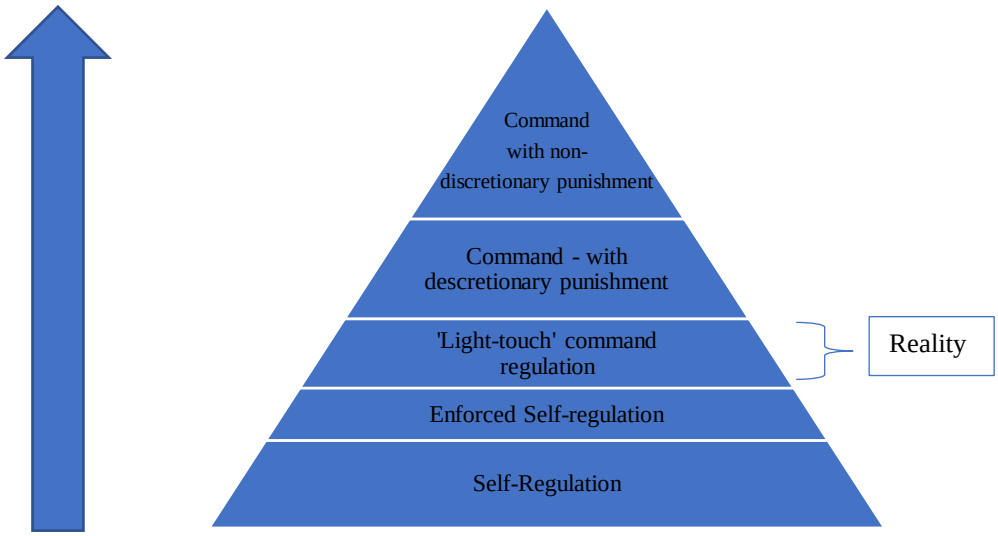

Figure 5.3: *Alternative Practical Pyramid of Regulation*

However, responsive regulation is built upon the existence of a strong peak which encourages companies to comply substantively. Without this peak and the real capacity to escalate, it is likely that improvements will continue to lack the required substance.

Another impediment to effective responsive regulation is polycentricity, as detailed in section 5.2. Although companies had developed their own way of eliminating this conflict, primarily through consolidating provisions and prioritising their sectoral regulator, the FRCN's NCCG has generated so much confusion, that some companies were unsure about their obligations, as E2 stated:

> From an insurance industry perspective, we need to have the regulators speak together. It appears they work independently, even though it could be that they work together, because currently we have a bit of a conflict … the [draft] NAICOM guidelines, which … will feed into the FRC code, for example requires that we have four board committees, while the FRC code requires that we have three committees, so there are those kinds of disparities that are annoying. So, we are just waiting for the NAICOM one to be passed so we can seek clarification as to what to do, three or four?

A situation where public companies have to report on their corporate governance to at least two regulators, and for those in relevant sectors, three regulators, is clearly sub-optimal. In such a situation, it is necessary to ask how they are expected to meet these multiple expectations all of the time. The incompatibility between the FRCN and SEC's philosophies is only likely to increase the complexity of this exercise, because the former's code operates on a voluntary basis, while the latter expects mandatory compliance.

The findings also reveal that the relationship between the regulators and regulatees is improving, albeit coloured with distrust following the controversies of the FRCN's 2016 activities. Notwithstanding, these relationships do not have the sufficient depth, and mutual understanding between all parties that were identified as critical to the success of responsive regulation during the discussion in Chapter 3.

The aggregation of the themes within this chapter therefore presents a significantly compromised system of responsive regulation in Nigeria. As a result, further enhancements are required in order to optimise corporate governance regulation.

5.5. Optimising Corporate Governance Regulation

This chapter has highlighted the improvements made in corporate governance in Nigeria, particularly in the area of compliance rates, general awareness of the importance of good governance, relationship management, and steps taken to minimise the impact of polycentricity. However, significant challenges to effective regulation were also outlined, not least the regulators inability to escalate their responses, the persistent disruptive effect of polycentric regulation, and emerging relationship between regulators and regulatees. In light of the foregoing, it is now necessary to evaluate three improvements that could increase the overall effectiveness and rate of compliance with corporate governance standards.

5.5.1. True Harmonisation

The picture of corporate governance regulation presented in section 5.2 is one that is incredibly fragmented, and unnecessarily convoluted. The FRCN has stated its intention to remedy this challenge by introducing some harmony in its press release, saying that all existing sectoral codes will eventually be withdrawn, but will be reissued as guidelines to the NCCG code in order address sector-specific requirements of corporate governance. In theory therefore, the NCCG would be the only code of corporate governance in Nigeria.

However, this harmony is unlikely to manifest in reality. As covered in section 5.2, the SEC, through R2's quotes and their press release, continue to demand mandatory compliance with their guidelines, and the entirety of the NCCG code. Public companies therefore have to report on compliance to the FRCN, and the SEC, and will also have to treat the NCCG on a mandatory basis, even though it was prepared by the FRCN with flexible principles and the expectation of voluntary compliance. This development goes against the expectations of company representatives such as E9 and E5, who had respectively expressed their belief that the SEC had become irrelevant in corporate governance, and they would not have to file multiple reports to different regulators.

To further complicate the picture, the regulators of banks, insurance companies, telecommunications companies and pension administrators are yet to issue their respective guidelines as of January 2021. As also outlined in section 5.2, this situation has resulted in considerable confusion for some companies, who neither have clarity on the number of board committees they are expected to have, nor the required composition of these committees.

As stated earlier, this solution to polycentricity bears the hallmarks of a political compromise, because corporate governance in Nigeria evolved in such a way that allowed each regulator to establish its authority over companies within their jurisdiction. It is therefore not going to be an easy task to suddenly reverse that history, and establish a single framework for governance regulation.

Consequently, the regulation of corporate governance is likely to remain complicated and fragmented. As E4 stated: 'So, as it stands right now, the FRCN code has not changed anything, because if the FRCN is stating that its implementation will be monitored by sectoral regulators, *the truth is it is still business as usual*.' This state of affairs is undesirable because it imposes additional burdens on companies, and may frustrate their attempts to create coherent internal governance frameworks. It may also create a reasonable excuse for non-compliance, as some companies may be unable to meet the different demands placed on them.

At the very least, the regulators need to agree on the appropriate philosophy. It should not be the case that one escalates to mandatory compliance, while the other encourages flexible interpretations of governance principles. However, some of the company representatives also expressed their belief that multiple regulators should be involved in corporate governance regulation. This is despite their agreement that there is not enough collaboration between all of these regulators. E3, for instance, said:

> Some people have felt that maybe a harmonisation of the codes could be useful. Yes, and no. Yes, in the sense that if it is in one document, you just know what you are dealing with, but no, in the sense that the sectors have different peculiarities, and in their codes, they would like to address those peculiarities, and I think that is why the current NCCG has adopted the approach of allowing the sectors to more or less implement the codes in their various sectors.

However, the continued involvement of multiple regulators is likely to result in the continuation of the conflicts outlined in section 5.2. In addition, a comparison of the NCCG and the SEC's guidelines on corporate governance does not result in any clear justification for their divergent approaches. R2 shared the sentiment as follows:

> I really do not want to give too much of an opinion of the FRC, but we have read their national code (NCCG), and we have found that it is 85% of our SEC Code. So, it is almost like a duplication of efforts, but they have their reasons why they are doing it, so, I wouldn't want to

speak on that, but I know it is 85% of the SEC code, like the words were practically lifted from the SEC code, just a few changes.

E6 also explained that 'to a large extent, the SEC code and CBN code are quite similar for the things I had to look at.' With such substantial similarity within the principles behind their provisions, the only real difference between these regulators' provisions is one of philosophy, which manifests in varying degrees of strictness and flexibility in the provisions. Therefore, the task of consolidation should not be held up by claims that each sector is peculiar and requires sectoral level regulation. In addition, sectoral regulators like the CBN, NCC, PENCOM and NAICOM already possess the ability to issue regulations that govern how companies operate, for instance regulations on the minimum capital adequacy ratio. The SEC in turn, also issues its SEC rules that govern the capital market operations of companies. Thus, any provision that is truly peculiar to a sector should be included within the body of the sectoral regulations, and should not be used to justify the existence of multiple corporate governance codes.

In the discussion in section 5.2, the FRCN was identified as the regulator with the most credible claim to legitimate authority in corporate governance. It therefore should be allowed to take full ownership of regulation in this field, without interference from other regulators. As E8 explained, companies are likely to prioritise the other sectoral regulators for as long as they are involved in corporate governance, because those regulators wield real influence over the business of these companies.

Without this interference, the FRCN can proceed to build its legitimacy with regulatees through deep relationships as advocated by responsive regulation. This is critical because the success of regulation would depend on the degree to which the FRCN is accepted, and its ability to inspire positive engagement with governance principles.

5.5.2. Adequate Resources

In section 5.1, the regulators shared how the lack of adequate resources continues to frustrate their ability to effectively implement and monitor corporate governance standards. To recap, R2 said:

> Well, we do not fully have the required resources … because the regulator is also trying to cut their costs … most of the time, we try to reduce our onsite visits, and we do offsite reviews, except we feel like it is totally necessary to go over to the organisation and visit … if we have to carry out a 100% effective review of compliance of companies, it would have to be onsite, and that would require a lot of resources … But cost is a constraint, so we can't say we fully have all the resources we need.

R1 also added that:

> I think there is more to it, there is more to be done, especially now that the council is now self-funding. There are a lot of activities to be done, a lot of plans, programmes need funding, and that funding is not coming. So funding is a very big problem for the council, and you know funding affects everything, it affects programmes you have to do, it affects the capacity of your employees because you need to train your employees, you need to give them the skills they need to do the work, you need to bring in more people to assist the work. So, I think funding is a very major issue, not just for the council, but I think for most regulators in Nigeria.

R1 further explained how the current sources of funding for the FRCN are drying up, with a negative impact on the body's capacity:

> The revenue sources available to the council are minimal, in terms of annual dues, registration fees, and very few people are complying, and even if they all comply, it would not be enough for what is the council needs to do. Again, the council needs to get support from the government in terms of subvention, the government has stopped paying subvention, and I think multiple sources need to come in … the government should come in once in a while, they should intervene in critical activities for the council, then individuals that we rely on too should also pay their annual dues, again and of course we've argued this thing severally with people. Another source of funding for the council is penalties, but the essence is not to rely so heavily

> on penalties, because one: penalties are not sustainable, because if you fine me this year for an offence, it is very likely that next year you won't fine me for that offence, and as people improve and improve their financial process, the funding from penalties will reduce. At a point, penalties were a major source of revenue for the council, but with financial reporting processes improving, which is good for the council, this is resulting in fewer penalties, so the council cannot rely on penalties anymore, because the financials are improving. So, I think the government should come in, private sector entities need to come in. We need also need to have funding from institutional organisations, like the World Bank and so on. They need to support the council, for some time now there hasn't been that intervention, and that is impacting on the council's activities.

A situation where governance regulators are unable to effectively train their officials and fund investigations is clearly undesirable, and poses great risk to all stakeholders. You also do not want a situation where regulators are overly motivated to apply penalties in order to fund their operations. E3 warned that this is already happening:

> Oh, sure I share the concern. I won't mention the specific – not necessarily SEC – I was talking to a council member of one of the regulators, and the council member said something that shocked me, which is that they are budgeting for income to come in from fines. So, in that case, if I'm responsible for making sure income comes from fines, I am more interested in violations than compliance, because if everyone complies, how will I meet my budget? Or people comply, and because I need to meet my budget, I still want to impose fines on them.

Although the allocation of funding is inherently a political consideration, the Nigerian government, as outlined in Chapter 1, has continuously emphasised the importance of corporate governance to the country's development. The resolution of the resource limitations therefore requires increased intervention from the government, if they are to truly to back up their declared commitment to good

corporate governance practices. Additional support may also be provided by international institutions such as the World Bank.

However, Nigeria and other emerging markets have several competing demands to satisfy, which in combination with impact of the COVID-19 pandemic, means an infinite supply of funding for corporate governance regulation alone does not exist. It is therefore necessary to ensure that the current resources are being used in the most efficient manner. In this regard, the need to consolidate corporate governance regulation is pertinent, as it is not reasonable to have six different corporate governance departments, performing the same role, with limited resources. It would be more efficient to combine their institutional knowledge and resources in order to encourage substantive adoption of corporate governance standards. This centralised way of monitoring and implementation would also ensure the cross-fertilisation of ideas between what were previously distinct departments.

5.5.3. Use of Light-Touch Escalation

The findings of this chapter reveal that the SEC was unable to satisfy the demands required for effective escalation of regulation. It is therefore necessary to ask whether there is any point in applying responsive regulation and demanding mandatory compliance, when it is clear that the regulators lack the capacity and resources to enforce this strategy. The reasonable conclusion would be to recommend a de-escalation to the level of the pyramid that is more appropriate for their resource levels i.e., enforced self-regulation. At this level, they only have to penalise those who have failed to disclose information about their governance operations, and they do not have to conduct forensic investigations into the application of each principle of corporate governance.

However, the discussion of institutional theory in Chapter 3 advocates for the development of strategies which are uniquely suited to the context of each jurisdiction. The participants in the interviews, both company representatives and regulators alike, stated that the threat of being sanctioned is necessary to encourage compliance with governance principles. In spite of the SEC's introduction of this threat, compliance levels remain at unimpressive levels, even though the rate of compliance has improved

significantly. There is therefore a real risk that any de-escalation to the voluntary treatment of governance principles could undermine the progress made in this regard. As R1 stated, if companies are only just managing to comply with mandatory standards, it is not very likely that they would comply with voluntary standards.

For this reason, the use of 'light-touch escalation' as outlined in section 5.4 and Figure 5.2 is recommended, albeit enhanced by increased monitoring levels. The objective should be to identify areas of weakness in regulatees' application of governance principles, and encourage them to rectify them. The application of sanctions should therefore only be applied in circumstances where these encouragements and subsequent warnings have been ignored. In the meantime, the SEC has indicated it will continue with the 'light-touch' approach in its application of the NCCG and the SEC's Guidelines. However, if the FRCN takes whole ownership of this field as recommended, they should also consider this strategy as outlined, in view of the lax attitude to voluntary regulation of some regulatees. Thereafter, as they build legitimacy with the regulatees, they can seek to generate substantive compliance, beyond the box-ticking compliance reported in section 5.1.

5.6. Chapter Summary

In Chapter 1, this project's research question was set out as follows: 'can escalation to mandatory corporate governance regulation improve corporate governance standards in the context of an emerging market?' From the discussion in this chapter, this question is answered in the affirmative with regards to the Nigerian experience. However, the findings from the data collection and analysis process detailed in Chapter 4, reveal that three key issues have limited the robustness of these improvements. In section 5.1, the improvements in compliance rates and general awareness were outlined, and revealed to be limited in substance because the regulators were unable to escalate their responses effectively due to a lack of adequate resources. The ultimate result was a system of monitoring and enforcement that was ill-equipped to produce substantive results.

The theme of polycentricity was subsequently explored in section 5.2 along with particular emphasis on the relationship between different regulators, and the effect on regulatees. This discussion revealed the existence of significant interference and conflicts, such that the ability of regulatees to engage with corporate governance standards was significantly compromised. The structural weaknesses in the recent attempts to harmonise the field were also highlighted. Section 5.3 followed with an evaluation of the depth and nature of the relationship between regulators and regulatees, based on the importance of this relationship to the success of regulatory strategies. The history of distrust between both parties was also discussed, albeit within the context of recent improvements in relationship management by the FRCN and the SEC.

Section 5.4 applied the theories laid out in Chapter 3 to the findings of this study. In doing so, the core assumptions of agency theory were seen to manifest in the regulatory policies deployed, although these assumptions were enhanced by principles of institutional theory. The persistent selection of mandatory regulation in this field is therefore seen as an aggregation of the concerns of these theories, and a repudiation of the principles of stewardship theory.

The core theory of responsive regulation was also applied to the findings, highlighting the key areas of departure from the theory and the difficulties experienced in its practical application. Although escalation to the succeeding level of the pyramid of regulation had occurred in theory, the level of regulation had remained in same in practice. This finding was described as 'light-touch escalation', because its threat of sanctions was sufficient to motivate a noticeable improvement in corporate governance, despite the fact that these sanctions were not applied. Section 5.5 concluded by highlighting the three key changes that are needed if substantive improvements are to be realised: true harmonisation, provision of resources, and the use of enhanced light-touch escalatory tactics.

6. Conclusion

This thesis has examined the state of responsive corporate governance regulation in Nigeria. This concluding chapter looks back on this examination, first through a summary of the chapters in section 6.1. Section 6.2 follows up by highlighting the contributions and implications of this thesis's findings, both to the body of knowledge, and to policy making in Nigeria and other relevant emerging markets. Subsection 6.2.1 highlights the characteristics that need to exist in order to apply these contributions in other emerging markets, because these markets vary in terms of their needs and peculiarities. Section 6.3 finalises this thesis by outlining the limitations of the research project, as well as considerations that could guide future research in this field.

6.1. Summary of Findings and Recommendations

Chapter 1 of this thesis introduced the research topic, and justified the focus of this research project on the introduction of mandatory corporate governance regulation in Nigeria. This introduction explained how two regulators of corporate governance, the SEC and FRCN, had escalated their approach to their duties, in order to strengthen corporate governance in Nigeria. This was to be achieved through the unusual demand for mandatory compliance with the provisions of codes, with sanctions to be imposed when such compliance was not witnessed.

Particular emphasis was placed on the role corporate governance development plays in this emerging market's desires to grow its economy and enhance its attractiveness for investment activity. This chapter also outlined the Nigeria-specific background to this research, its broader emerging-markets context, and the project's objectives. The chapter thereafter offered a synopsis of the remainder of the thesis.

Chapter 2 detailed the development and evolution of corporate governance regulation in Nigeria, and outlined the existing regulatory framework. This chapter also analysed the literature on corporate governance regulation in Nigeria, with the purpose of contextualising the research project, and emphasising the necessary contributions to be made to the literature. This analysis revealed a high rate of regulatory activity in corporate governance, which manifests in the existence of multiple regulators

and discordant regulatory policymaking. Perennial challenges to good corporate governance practices in Nigeria were also identified, including weak legal institutions, failure of implementation, multiplicity of governance codes and regulators, weak shareholder activism, and concentrated family ownership patterns. The desire to mitigate these challenges was consequently identified as the motivation for the application of responsive or escalatory strategies by the regulators.

Analysis of the literature also revealed considerable support for escalation to mandatory compliance in order to combat these challenges. In this respect, the SEC and FRCN's adoption of mandatory compliance in 2014 and 2016 respectively was of interest, as it offered an opportunity to examine whether this escalation had helped to boost governance standards and mitigate the identified challenges. The result of this examination would also inform the literature on the viability of a mandatory system in whole or in part, not only in Nigeria, but also in the wider context of emerging markets. In addition, the literature was identified as being silent on post-2014 developments, particularly the manner in which the regulators had escalated their responsibilities, and the emergence of the FRCN and its attempts to harmonise corporate governance regulation. It was therefore necessary to examine the impact of these developments.

Chapter 3 reviewed the theories of corporate governance and regulation, the applicable literature, and provided the theoretical framework for this research project. This review included four theories of corporate governance identified as relevant to this research project, namely: agency theory; stakeholder theory; stewardship theory; and institutional theory. Agency theory was found to underpin the dominant regulatory models across the globe, while stakeholder theory has gradually influenced wider considerations within the corporate structure. Stewardship theory was presented as offering a different, albeit less popular approach to corporate governance, while institutional theory's admonitions to adapt corporate governance to local contexts were detailed.

Thereafter, this chapter focused on the practical challenge of corporate governance regulation, particularly the issue of choosing the optimal mechanisms of regulation. Regulation in this field was

presented as operating within a continuum ranging from no regulation, to self-regulation, coregulation, and government regulation. The widely adopted method of self-regulation was analysed, and juxtaposed against state-regulation. The selected mode of regulation was stated to be important because the wrong strategy could have disastrous effects on companies, regulators, and stakeholders. The adoption of extreme positions on either side of this continuum was also stated to be undesirable, with the partially mandatory regime of self-regulation, which offers voluntary adoption of governance standards but imposes mandatory disclosure, being proffered as the optimal solution in contemporary corporate governance. However, as covered in the preceding chapters, this solution was found wanting in Nigeria, and the regulators escalated to demand mandatory compliance. It was therefore necessary to further analyse the regulatory strategies, and present a framework for the study.

The theory of responsive regulation was presented on the basis that stand-alone regulatory approaches may be insufficiently robust to tackle the challenge of ineffective regulation, and perhaps hybrid solutions could produce better results. Responsive regulation, in this light, proposes a pyramidal approach to regulation whereby regulators combine strategies of persuasion at the base, and progressively escalate to more deterrent measures when necessary, in order to extract substantive compliance from regulatees. However, the limitations of this theory were also outlined, particularly the limitations on regulators' ability to escalate effectively, the absence of strong sanctions at the top of the pyramid, the dilution caused by polycentric regulation, and weak relationships between the regulator and the regulated.

Nonetheless, responsive regulation was identified as relevant to this project because, at first appearance, the Nigerian regulators had applied the pyramidal strategy, first with persuasive regulation, and followed by an escalation in the pursuit of better results. The strategy of responsive regulation therefore provided a useful roadmap for analysing corporate governance in Nigeria, as it would be possible to examine whether the regulators had effectively applied the strategy as outlined, and whether the limitations of this strategy had manifested. This chapter explained how the answers to these questions would be extracted from interviews with company secretaries, directors, and regulators. The

information gleaned through this enquiry was argued to help to formulate an answer to the question about the ability of mandatory corporate governance regulation within a responsive system, to resolve the challenges of good corporate governance in Nigeria.

Chapter 4 outlined how the socio-legal methodology and the qualitative interview method were used to achieve the objectives of this research project. The socio-legal methodology was adopted because it is an approach that focuses on the law within its context, and allows for the examination of how legal processes work in practice. Within this methodology, semi-structured interviews were used because they generate data of great depth, and are a particularly useful means of evaluating the efficacy of regulatory policies. In this study, semi-structured interviews were conducted with 12 respondents, comprising of 10 company representatives and 2 regulators. This chapter outlined how the original data collection strategy was impacted by the COVID-19 pandemic, and the revisions that were necessary in order to conduct this process safely. Most significantly, the respondents were recruited remotely, and the interviews were conducted by way of video conferencing and telephone due to the health regulations. This chapter also described how the data was transcribed and analysed, with the aid of the NVivo 12 software. Thereafter, the ethical issues that arose and the steps taken to mitigate them were considered, as well as the challenges and limitations experienced in the use of this methodology.

Chapter 5 analysed and discussed the findings of the data collected for the purpose of this research project. The first significant finding was the confirmation that the application of responsive regulation here through requiring mandatory compliance with codes of corporate governance, can have a positive impact on corporate governance standards. Impact here was embodied by wider representation of independent directors on the boards of companies, and an improvement in compliance rates to 60%, compared to the 40% rate reported in previous studies. However, the substance of these improvements leaves much to be desired for three reasons.

First, a 60% rate of compliance represents a poor return on the efficacy of responsive regulation, particularly since there ought to be significant deterrents to non-compliance. Second, the data suggests

that companies have responded to the escalation by focusing on the minimum standards, such that improvements in governance standards were described as being 'cosmetic' by a company secretary. Third, the regulators lack the ability and resources to escalate to the intensive enforcement strategy required by responsive regulation. As a result, they have not enforced penalties for non-compliance with corporate governance standards, rather, they penalise late and non-submissions instead. Similarly, the monitoring capacity has not been escalated, and reliance is still placed on companies to self-regulate. This inability to escalate is a major impediment to the efficacy of responsive regulation, and explains why there remains significant potential for improvements here.

The second main finding was the destabilising impact of polycentric regulation, in spite of changes purportedly aimed at resolving this issue. The continued existence of multiple regulators was found to create confusion, resulting in some companies prioritising their primary regulators over other regulators, and other companies questioning the relevance of the 'ancillary' regulators. This challenge has been exacerbated by the conflicting philosophies of the FRCN and SEC, such that the former encourages flexible application of provisions on an 'apply and explain' basis, while the latter demands mandatory compliance with the same provisions of corporate governance. The variance in approach of regulators in this polycentric system consequently compromises the overall efficiency of corporate governance regulation.

The analysis in this chapter further revealed that the relationship between regulators and regulatees has been strengthened, largely as a result of enhanced relationship-management policies by the regulators. The regulatees are now routinely consulted ahead of policy changes, and feel a degree of ownership and participation in policy making. However, distrust of regulators and concerns about the abuse of regulatory power continue to exist, and the regulators need to remain consistent with their consultative efforts in order to eliminate the distrust. Ultimately, responsive regulation requires a strong relationship between regulators and regulatees, as it informs the determination of the appropriate time to escalate to more punitive means of regulation, and to de-escalate to less restrictive measures.

These findings were reviewed against the theories of corporate governance discussed in the third chapter. This review pointed to the strong influence of agency theory on the mode of corporate governance regulation in Nigeria, although stakeholder factors and a consideration of institutional influences have resulted in a dominant idea that mandatory compliance is required if good corporate governance standards are to be truly adopted. The review against the theory of responsive regulation also found that although there was a purported escalation to a command system on the pyramid of regulation, the method of implementation and monitoring remained at the level of enforced self-regulation, which places major reliance on each company's attitude to corporate governance. Two revised pyramids of regulation were therefore presented in order to explain this phenomenon, and the idea of 'light-touch' command regulation was introduced as an additional level of the pyramid to be used where regulators lack the resources and capacity to escalate effectively.

Chapter 5 concluded by outlining three recommendations for the optimisation of responsive regulation in Nigeria. The first was truly harmonising the regulation of corporate governance, such that there are no confusions about the dominant authority and the operative philosophy of regulation in this field. In this respect, the FRCN was identified as the regulator with the most credible claim to legitimacy, and should therefore be permitted to take full ownership of regulation. Without the interference of other regulators, the FRCN may proceed to build its legitimacy with regulatees through deep relationships as advocated by responsive regulation. This is critical because the success of regulation would depend on the degree to which the FRCN is accepted, and its ability to inspire positive engagement with governance principles.

Second, the capacity and level of resources available to the regulators needs enhancing, because a situation where governance regulators are unable to effectively train their officials and fund investigations is clearly undesirable, and poses great risk to all stakeholders. A major part of this enhancement would be fulfilled by harmonisation advocated above, as the scarce resources and institutional knowledge would be combined in one regulator, as opposed to being split across 6 different regulators. The Nigerian government, which as outlined in Chapter 1, has continuously emphasised the

importance of corporate governance to the country's development, also needs to support this commitment with more resources, perhaps with the support of institutions such as the World Bank.

The third recommendation was the continued use of 'light-touch' escalation where regulators lack the required resources, particularly in circumstances where there is strong evidence that lax regulation would result in the rules being ignored by regulatees. This is set to be a helpful measure for emerging markets like Nigeria where weak legal institutions exist, and is an application of a solution which suits the peculiarities of these jurisdictions, as advocated by institutional theory.

6.2. Contributions

This thesis makes contributions to the theory of responsive regulation, the socio-legal methodology, and empirical literature on corporate governance in Nigeria and emerging markets with the characteristics identified in subsection 6.2.1.

This thesis contributes to responsive regulation by testing the core principles of this theory within the context of its application in corporate governance regulation in Nigeria. The findings confirm that the use of this escalatory strategy, wherein regulatees are encouraged to comply with regulatory provisions under the threat of sanctions, can yield positive results. However, the substance of these results are reliant on the extent to which the challenges identified in the literature are mitigated.

The challenges of resource constraints, polycentric regulation, and regulatory relationships were identified as factors that frustrated the effective application of responsiveness. In the case of emerging markets, particularly those where regulators operate in low-trust environments with weak legal institutions, the task of effectively applying responsive regulation becomes more cumbersome. Other concerns of this strategy in corporate governance include the difficulty in observing all infractions of corporate governance through external analysis, and the increased costs of enforcement and monitoring required. This thesis addresses the enhanced challenge through recommendations aimed at the

workability of responsive regulation in such environments, and introduces a new level of 'light-touch escalation' to the pyramid of regulation to this effect.

This thesis also possesses practical implications for regulators, companies, and stakeholders regarding the structure and implementation of corporate governance regulation. It suggests how regulation could be simplified through harmonisation and the adoption of a single coherent philosophy. With reference to the contributions of company representatives and regulators, this thesis further illustrates why the attempts to harmonise corporate governance in Nigeria are unlikely to achieve the desired results, not least because the regulators differ in their perception of the appropriate mode of regulation. In addition, this thesis highlights why escalatory regulation is required, particularly with regards to key corporate governance principles such as the inclusion of independent directors, as there is a strong indication that some companies would ignore such provisions if given the freedom to do so.

This thesis also highlights the contribution of the socio-legal methodology to policy-based research, particularly within the context of the COVID-19 pandemic and the resulting disruptions to everyday practice. The process of data collection and analysis outlined in Chapter 4, demonstrates that this methodology remains relevant where physical fieldwork is implausible, and shares knowledge about how to recruit participants, and collect data in such circumstances.

6.2.1. Relevance to Emerging Markets

Finally, this thesis contributes to the literature on corporate governance regulation in emerging markets. As stated in Chapter 1, the literature on corporate governance regulation predominantly focuses on developed countries and economic powerhouses. However, in recent years, a sizeable portion of the literature has focused on the experience of emerging markets, highlighting how and why regulation in these countries ought to differ in philosophy, complexity, and robustness from that of their more established counterparts. This is because governance mechanisms in these countries tend to be soft law oriented and influenced by international models along economic ties, membership of international organisations, and foreign investment activities. These mechanisms are said to be beset by institutional

challenges in these emerging markets which frustrate good corporate governance practices, not least: small capital markets; concentrated ownership in the elite; inadequate disclosure and transparency; corruption; political interference; and weak legal institutions.

However, the term 'emerging markets' at its broadest definition, covers a very large part of the globe, ranging from Pakistan with a per capita income of US$1,580, to Kuwait where the per capita income is US$31,430.[627] This category includes China and countries in Central and Eastern Europe, which have transited from centrally planned economies to free market economies. Within this category are resource-rich countries in the Middle East, Africa, Asia, and Latin America, and countries with small capital markets and free-market economies at the early stage of their development.[628] These countries all possess different characteristics. While some tend to have well-educated labour forces and adequate infrastructure, others have the opposite. Some may depend predominantly on one sector of the economy, such as oil and gas, agriculture, or tourism, while others are more diversified. In view of these individual peculiarities, it would be disingenuous to categorise this group of countries as wholly one and the same.

However, when it comes to the field of corporate governance, some emerging markets share similar corporate governance experiences, which makes the findings of this thesis relevant to their circumstances. The state of corporate governance in emerging markets is largely influenced by the post-Cadbury proliferation of codes of corporate governance across the globe, as discussed in Chapter 3. Attributable to a concerted effort by multilaterals and international organisations, including the World Bank, the IMF, and the OECD, to improve global governance standards, the proliferation of these codes is resoundingly manifest in emerging markets, where they have guided governance reforms.[629]

[627] The World Bank, 'GNI per capita, Atlas method (current US$)' < https://bit.ly/2Zgptsb> accessed 29 May 2019.
[628] What's in a Name? Defining emerging markets', *The Economist* (5 October 2017) < https://econ.st/2ETVJtq> accessed 29 May 2019.
[629] Maria Krambia-Kapardis and Jim Psaros, 'The Implementation of Corporate Governance Principles in an Emerging Economy: a critique of the situation in Cyprus' (2006) 14 Corporate Governance: An International Review 126; Aguilera and Cuervo-Cazurra (n 334).

A tacit assumption in corporate governance literature is that there exists a causal relationship between a company's performance and its degree of adoption of good governance practices.[630] However, the empirical evidence is inconclusive on this point, as direct and consistent evidence of this causal link has proven elusive to establish.[631] Nevertheless, this assumption has inspired a substantial body of research into compliance rates in different jurisdictions. As previously outlined, there is a high level of compliance with governance standards in the UK, where the FRC reports over ninety percent compliance with all but one or two recommendations.[632] Studies in the literature similarly identify a significant degree of compliance in Germany,[633] the Netherlands,[634] Spain,[635] and Portugal,[636] amongst other developed economies.

However, the situation in emerging markets stands in sharp contrast to the established markets. According to Klapper and Love who analysed data from fourteen emerging countries, governance standards in these jurisdictions fall far behind global standards, largely as a result of low incidences of compliance with codes.[637] Their study indicates a wide variation of internal governance arrangements amongst companies, with average standards being much lower in countries with weaker legal institutions.[638] Subsequent studies in South America note the marginal improvement of standards,

[630] Paul Brockman, Xiumin Martin, and Puckett, 'Voluntary disclosures and the exercise of CEO stock options' (2010) 16 Journal of Corporate Finance 120; Ayo Awotundun and others, 'Corporate governance and stakeholders' interest: a case of Nigerian banks' (2011) 6 International Journal of Business and Management 110.
[631] Jerilyn Coles, Victoria McWilliams and Nilanjan Sen, 'An Examination of the Relationship of Governance Mechanisms to Performance' (2002) 27 Journal of Management 23; Henry Tosi, Jeffrey Katz and Luis Gomez-Mejia, 'How Much Does Performance Matter? A Meta-Analysis of CEO Pay Studies' (2000) 26 Journal of Management 301.
[632] Financial Reporting Council, 'FRC reports on better compliance with UK Corporate Governance Code and need for improved adherence to the UK Stewardship Code' (*FRC News*, 15 January 2015) < https://bit.ly/2PlfsV6 > accessed 4 December 2018
[633] Axel Werder, Till Talaulicar and George Kolat, 'Compliance with the German Corporate Governance Code: an empirical analysis of the compliance statements by German listed companies' (2005) 13 Corporate Governance: An International Review 178.
[634] Dirk Akkermans, and others, 'Corporate governance in the Netherlands: an overview of the application of the Tabakslat Code. (2004) 15 Corporate Governance: An International Review 1106.
[635] Esther Del-Brio, Elida Maia-Ramires and Javier Perote, 'Corporate Governance Mechanisms and their Impact on Firm Value' (2006) 4 Corporate Ownership and Control 25.
[636] Carlos Alves and Victor Mendes, 'Corporate governance policy and company performance: the Portuguese case' (2004) 12 Corporate Governance: An International Review 290.
[637] Klapper and Love (n 7).
[638] ibid.

however compliance rates remain low.[639] This picture was found to be largely consistent with studies conducted in Sub-Saharan Africa as well.[640] The trend has also been identified in South Asian countries, with findings often reporting low levels of compliance and substantial non-compliance. [641]

Whilst a substantial portion of the literature is focused on highlighting the regulatory challenges to governance and expositing their root causes, some researchers have proffered reforms and alternative perspectives for the regulation of corporate governance in these institutional contexts. A recurring element of these recommendations is an increased element of compulsion i.e., escalating through the pyramid of regulation to require mandatory compliance, and indeed, some countries have applied this escalation, in addition to Nigeria as covered in this thesis. [642]

The shared experiences of the emerging markets therefore presents an opportunity for the transfer of knowledge among them, particularly among those countries that possess four key characteristics. The first consideration covers those emerging markets, which like Nigeria in Chapter 1, have adopted corporate governance as a critical part of their strategy to realise their potential for rapid economic growth. This may be evidenced either through explicit statements from state sources, or through the continuous development of corporate governance frameworks. The second factor looks at emerging markets that have recorded poor compliance rates with corporate governance provisions, as a result of weak legal institutions. Perhaps most relevant of all, the third and fourth characteristics focus on the existence of multiple regulators of corporate governance, and the escalation of the regulatory approach to mandatory compliance.

[639] Alexandre Di Miceli da Silveira, 'Corporate governance in Brazil: Landmarks, codes of best practices, and main challenges' (2009) 8 The IUP Journal of Corporate Governance 20.
[640] Simeon Wanyama, Bruce Burton and Christine Helliar, 'Frameworks underpinning corporate governance: evidence on Ugandan perceptions' (2009) 17 Corporate Governance: An International Review 159.
[641] Gurbandini Kaur and Richa Mishra, 'Corporate governance failures in India: A study of Academicians perceptions.' (2010) 9 The IUP Journal of Corporate Governance 99; Syed Zulfiqar Ali Shah and Safdar Butt, 'The impact of corporate governance on the cost of equity: empirical evidence from Pakistani listed companies' (2009) 14 The Lahore Journal of Economics 139.
[642] Asian Development Bank, 'Corporate Governance in South Asia: Trends and Challenges' 2021 <https://bit.ly/3uWOVn4> accessed 28 February 2021.

The presence of these factors in whole or in part, mirrors the experience of corporate governance regulation in Nigeria as examined in this thesis in such a way that the findings find relevance, and may be instructive for regulators, companies, and other stakeholders in such jurisdictions. The Asian Development Bank's 2021 report identifies Bangladesh, Pakistan and Nepal as countries which possess the above shared experiences, particularly through escalation to mandatory regulation.[643]

While the Nigerian experience shows that the application responsive regulation in this form can produce positive results, such an escalatory strategy requires well-resourced regulators, with the right capacity and expertise required to be effectively responsive to shifting attitudes of regulatees. It is also necessary to eliminate sources of polycentric regulation, and encourage strong relationships between the regulators and regulated through regular consultations.

6.3. Limitations and Further Research

This thesis's conclusions are built upon data generated by the socio-legal methodology and qualitative interviews outlined in Chapter 4. This process presents three limitations, the first of which concerns the reliability of interview data. Reliability concerns arise because people may have myriad motivations to present an incomplete version of the truth, and without means of independently verifying their statements, there is a limit to how much reliance ought to be placed on information they provide. As outlined in that chapter, source triangulation was used to mitigate this risk, by interviewing sources from different sectors, and from both sides of the regulator and regulatee divide. This process made it possible to concentrate on themes on which the different sources provided consistent information for reliable analysis. In addition, instances where the information provided was not independently verifiable were disclosed, such as the SEC's (R2's) statement on compliance rates.

Another limitation of this methodology and method is the risk of interviewer bias. This means that it is possible for the interviewer to influence the responses through the way the questions are framed, and

[643] ibid 90.

the way the data is analysed. While it is impossible to measure or completely eliminate bias, measures were taken to mitigate this limitation. These included participating in interviewing training led by experts, review and approval of the interview questions by the University Research Ethics Committee, and the conduct of pilot interviews to ensure the questions were responsibly phrased. However, as this was my first interview study, there was a steep learning curve for me in the conduct of these interviews, such that subsequent interviews benefited from the experience gained from previous ones. It is nonetheless possible that other researchers could interpret different themes from the data collected.

The third limitation is that of sample size and representation of the results generated. Although an initial target of 20 respondents was set out for this project, there were ultimately 12 respondents (10 company representatives and 2 regulators) who participated against the backdrop of the disruption caused by the COVID-19 pandemic. This gives rise to the concerns that the findings of this study be unrepresentative and unreliable. However, this research project does not make any claims about representativeness, and does not assert that its results are the absolute and singular narrative of responsive regulation in this context. Rather, the results expand the knowledge of how responsive regulation has worked in this context, the challenges experienced, and how the stakeholders interviewed have come to terms with this experience.

Nonetheless, future research in this field could benefit from contributions from many more company secretaries, directors, regulators and stakeholders. A broader sample size of this nature may help to amplify perspectives that would otherwise be missed or ignored.

Further, the state of corporate governance in Nigeria is in a state of flux, as evidenced by the significant changes which took place within the duration of this research project. It is therefore necessary to monitor how these constant streams of developments affect the corporate governance experience in the future, particularly with regards to the FRCN's NCCG, and attempts at harmonisation. Such future studies may explore the inter-regulatory relationships and contrasting philosophies at greater depth.

Bibliography

Adegbite E and Nakajima C, 'Institutions and institutional maintenance: implications for understanding and theorizing corporate governance in developing economies' (2012) 42 International Studies of Management and Organization 69.

Adegbite E, 'Corporate governance regulation in Nigeria.' (2012) 12 Corporate Governance: The International Journal of Business in Society 257.

Adetula A, 'A Review of Corporate Governance Codes in 2014' (2015) Stillwaters Law Firm <https://bit.ly/2wgZ8AO> accessed 22 January 2020.

Aguilera R and Cuervo-Cazurra A, 'Codes of good governance worldwide: what is the trigger?' (2004) 25 Organization Studies 415.

Aguilera R and Cuervo-Cazurra A, 'Codes of Good Governance' (2009) 17 Corporate Governance: An International Review 376.

Ahunwan B, 'Corporate Governance in Nigeria' (2002) 37 Journal of Business Ethics 287.

Akkermans D and others, 'Corporate governance in the Netherlands: an overview of the application of the Tabakslat Code. (2004) 15 Corporate Governance: An International Review 1106.

Alves C and Mendes V, 'Corporate governance policy and company performance: the Portuguese case' (2004) 12 Corporate Governance: An International Review 290.

Amao O and Amaeshi K, 'Galvanising shareholder activism: A prerequisite for effective corporate governance and accountability in Nigeria' (2008) 82 Journal of Business Ethics 119.

Anand A, 'Voluntary Mandatory Corporate Governance: Towards an Optimal Regulatory Framework' (2004) Canadian Law and Economics Association 12.

Antaki C and others, 'Discourse Analysis Means Doing Analysis: A Critique of Six Analytic Shortcomings' (2003) Discourse Analysis Online 1 <https://bit.ly/3q7QYCe> accessed 20 November 2020.

Aoki M, *Information, corporate governance, and institutional diversity: Competitiveness in Japan, the USA, and the transnational economies* (OUP 2000).

Asian Development Bank, 'Corporate Governance in South Asia: Trends and Challenges' 2021 <https://bit.ly/3uWOVn4> accessed 28 February 2021.

Awotundun A and others, 'Corporate governance and stakeholders' interest: a case of Nigerian banks' (2011) 6 International Journal of Business and Management 110.

Ayres I and Braithwaite J, *Responsive Regulation: Transcending the Deregulation Debate* (OUP 1992).

Azuka Azinge's Two Years As Head of Corporate Affairs Commission (CAC)' *Proshare* (11 October 2019) < https://bit.ly/3832aGi> accessed 21 February 2020.

Baggs J, Silverstein B and Foley M, 'Workplace Health and Safety Regulations: Impact of Enforcement and Consultation on Workers' Compensation Claims Rates in Washington State' (2003) 43 American Journal of Industrial Medicine 483.

Baker S and Edwards R, 'How many qualitative interviews is enough? Expert voices and early career reflections on sampling and cases in qualitative research' (2012) National Centre for Research Methods 4 <http://eprints.ncrm.ac.uk/2273/> accessed 20 November 2020.

Bakre O, 'The unethical practices of accountants and auditors and the compromising stance of professional bodies in the corporate world: Evidence from corporate Nigeria' (2007) 3(1) Accounting Forum 277.

Baldwin J and Davis G, 'Empirical Research in Law' in Peter Cane and Mark Tushnet (eds), *The Oxford Handbook of Legal Studies* (OUP 2005).

Baldwin R and Anderson R, *Rethinking Regulatory Risk* (CUP 2002).

Baldwin R and Black J, 'Really Responsive Regulation' (2008) 71 Modern Law Review 60.

Baldwin R, 'Why Rules Don't Work' (1990) 53 Modern Law Review 321.

Baldwin R, Cave M and Lodge M, *Understanding Regulation: Theory, Strategy, and Practice* (OUP 2011).

Bardach E and Kagan R, *Going by the Book: The Problem of Regulatory Unreasonableness* (Temple University Press 2002).

Barker R, *Political Legitimacy and the State* (OUP 1990).

Becker G, 'Crime and Punishment: an Economic Approach' (1968) 76 Journal of Political Economy 169.

Bello O, 'NSE Sanctions 35 Companies N452m in 11 months' *Leadership* (27 November 2018).

Berg S and Smith S, 'CEO and board chairman: A quantitative study of dual vs. unitary board leadership' (1978) 3 Directors & Boards 34.

Berglöf E and Claessens S, 'Corporate Governance and Enforcement' (2004) World Bank Policy Research Papers WPS3409, 4 < https://bit.ly/3sQ5HmE> accessed 20 January 2021.

Berglöf E and Claessens S, 'Enforcement and good corporate governance in developing countries and transition economies' (2006) 21 The World Bank Research Observer 123.

Berle A and Means G, *The Modern Corporation and Private Property* (Macmillan Publishing 1932).

Bhagat S and Black B, 'The Uncertain Relationship between Board Composition and Firm Performance' (1999) 54 The Business Lawyer 921.

Black J, 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' (2008) 2 Regulation & Governance 137.

Blair M, *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century* (Brookings Institution 1995) 372.

Bolderston A, 'Conducting a Research Interview' (2012) 43 Journal of Medical Imaging and Radiation Sciences 66.

Boyatzis R, *Transforming qualitative information: Thematic analysis and code development* (Sage Publications 1998).

Bradney A, 'The Place of Empirical Legal Research in the Law School Curriculum', in Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2010).

Braithwaite J, 'Types of responsiveness' in Peter Drahos (eds), *Regulatory Theory: Foundations and Applications* (ANU Press 2017).

Braithwaite J, *Responsive Regulation and Restorative Justice* (OUP 2002).

Braun V and Clarke V, 'Using thematic analysis in psychology' (2006) 3 Qualitative Research in Psychology 79.

Brockman P, Martin X, and Puckett A, 'Voluntary disclosures and the exercise of CEO stock options' (2010) 16 Journal of Corporate Finance 120.

Bruce A, Buck T and Main B, 'Top Executive Remuneration: A View from Europe' (2005) 42 Journal of Management Studies 1493.

Bryman A, *Social Research Methods* (4th edn, OUP 2012).

Buiter W and Rahbari E, 'Global Growth Generators: Moving beyond emerging markets and BRICS' (2011) 55 Centre for Economic Policy Research 5.

Burmeister E and Aitken L, 'Sample size: How many is enough?' (2012) 25 Australian Critical Care 271.

Burton M, 'Doing empirical research: Exploring the decision-making of magistrates and juries' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018) 66.

Burton P, 'Antecedents and consequences of corporate governance structures' (2000) 8 Corporate Governance: An International Review 194.

Cadbury Committee, 'Report of the Committee on the Financial Aspects of Corporate Governance' (1992) 15.

Cane P and Kritzer H, 'Introduction' in Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (OUP 2010).

Carney M, Gedajlovic E and Sur S, 'Corporate governance and stakeholder conflict' (2011) 15 Journal of Management and Governance 483.

Central Bank of Nigeria, 'About CBN' (2020) < https://bit.ly/3ame1jZ> accessed 28 February 2020.

Central Bank of Nigeria, 'CBN Exchange Rates – February 2020' <https://bit.ly/2vsZa8A> accessed 4 February 2020.

Central Bank of Nigeria, 'Code of Corporate Governance for Banks and Discount Houses in Nigeria' (2014) < https://bit.ly/32HQiZ2 > accessed 22 February 2020.

Central Bank of Nigeria, 'Code of Corporate Governance for Banks in Nigeria Post Consolidation' (2006).

Central Bank of Nigeria, 'Code of Corporate Governance for Banks and Discount Houses in Nigeria (2014).

Central Bank of Nigeria, 'Codes of Corporate Governance for Other Financial Institutions in Nigeria' (2018) < https://bit.ly/2I6lebR> accessed 28 February 2018.

Chaganti R, Mahajan V and Sharma A, 'Corporate board size, composition and corporate failures in the retailing industry' (1985) 22 Journal of Management Studies 400.

Charles River Associates, 'Securities Enforcement in Canada: The Effect of Multiple Regulators' (2003) Committee to Review the Structure of Securities Regulation in Canada: Research Studies 474.

Chin T, Vos E and Casey Q, 'Levels of Ownership Structure, Board Composition and Board Size Seem Unimportant in New Zealand' (2004) 2 Corporate Ownership and Control 119.

Chirinko R and Elston J, 'Finance, control and profitability: the influence of German banks' (2006) 59 Journal of Economic Behaviour and Organization 69.

Clarkson M, 'A Stakeholder Framework for Analysing and Evaluating Corporate Social Performance' (1995) 20 Academy of Management Review 92.

Coles J, McWilliams V and Sen N, 'An Examination of the Relationship of Governance Mechanisms to Performance' (2002) 27 Journal of Management 23.

Cownie F and Bradney A, 'Socio-legal studies: a challenge to the doctrinal approach' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018) 42.

Cuevas-Rodríguez G, Gomez-Mejia L and Wiseman R, 'Has Agency Theory Run its Course: Making the Theory more Flexible to Inform the Management of Reward Systems' (2012) 20 Corporate Governance: An International Review 526.

Daily C and Dalton D, 'Bankruptcy and Corporate Governance: The Impact of Board Composition and Structure' (1994) 6 Academy of Management Journal 1603.

Davidson W, Bouresli A, and Singh M, 'Agency costs, ownership structure and corporate governance in pre and post-IPO firms.' (2006) 3 Corporate Ownership & Control 88.

Davis J, Schoorman D and Donaldson L, 'Toward a Stewardship Theory of Management' (1997) Academy of Management Review 20.

Deckop J, 'Determinants of Chief Executive Compensation' (1988) 41 Industrial and Labour Relations Review 224.

Del-Brio E, Maia-Ramires E and Perote J, 'Corporate Governance Mechanisms and their Impact on Firm Value' (2006) 4 Corporate Ownership and Control 25.

Demb A and Neubauer F, 'The Corporate Board: Confronting the Paradoxes' (1992) 25 Long Range Planning 9.

Denscombe, M *The good research guide: for small-scale social research projects* (OUP 2014).

Denzin N and Lincoln Y, 'Introduction: The Discipline and Practice of Qualitative Research' in Denzin N and Lincoln Y (eds), *The SAGE Handbook of Qualitative Research* (Sage Publications 2008).

Dharwadkar R, George G and Brandes P, 'Privatization in Emerging Economies: An Agency Theory Perspective' (2000) 25 The Academy of Management Review 650.

Di Miceli da Silveira A, 'Corporate governance in Brazil: Landmarks, codes of best practices, and main challenges' (2009) 8 The IUP Journal of Corporate Governance 20.

Diener E and Crandall R, *Ethics in social and behavioral research* (UCP 1978).

Dimka Y and Iji B, 'Complying with amended corporate governance code' (2014) ILO <https://bit.ly/2CQsPZ8 > accessed 23 January 2020.

Dingwerth K, 'The Democratic Legitimacy of Public–Private Rule Making: What Can We Learn from the World Commission on Dams?' (2005) 11 Global Governance 65.

Dobinson I and Johns F, 'Legal Research as Qualitative Research' in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (2nd edn, Edinburgh University Press 2017) 19.

Donaldson L and Davis J, 'Boards and Company Performance - Research Challenges the Conventional Wisdom' (1994) Corporate Governance: An International Review 151.

Donaldson L and Davis J, 'Stewardship Theory or Agency Theory: CEO Governance and Shareholder Returns' (1991) Australian Journal of Management 149.

Douma S, 'The two-tier system of corporate governance' (1997) 30 Long Range Planning 612.
ECGI 2019, 'Codes' <https://ecgi.global/content/codes > accessed 28 January 2019.

Economic and Social Research Council, 'Our core principles' (2019) < https://bit.ly/2K4wtVr> accessed 29 November 2020.
Edwards R and Holland J, What Is Qualitative Interviewing? (Bloomsbury 2013) 26.

Eisenberg T, Sundgren S and Wells M, 'Larger board size and decreasing firm value in small firms' (1998) 48 Journal of Financial Economics 35.

Elo S and Kyngas H, 'The qualitative content analysis process' (2008) 62 Journal of Advanced Nursing 107.

Elo S and others, 'Qualitative Content Analysis: A focus on Trustworthiness' (2014) 4 SAGE Open 10.

Emmanuel O, 'FRC lacks the authority to suspend Stanbic IBTC's directors, says CBN' *Premium Times* (4 November 2015) < https://bit.ly/2IiqMjD> accessed 28 February 2020.

Faccio M, Lang L and Young L, 'Dividends and Expropriation' (2001) 91 American Economic Review 54.

Famuyiwa D, 'NSE fines 38 firms N429.5 million over 52 offences' *Nairametrics* (4 February 2019).

Famuyiwa D, 'World Bank rates Nigeria among top 20 improvers in doing business' *Nairametrics* (28 September 2016) < https://bit.ly/2PswBz0> accessed 21 February 2020.

Feld L and Frey B, 'Tax Compliance as the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Regulation' (2007) 29 Law and Policy 102.

Financial Conduct Authority, 'Listing Rules' (2020)

Financial Reporting Council 'History of the UK Corporate Governance Code' < https://bit.ly/37mL5GR> accessed 28 January 2020.

Financial Reporting Council of Nigeria, 'Facts about the defunct NASB' (2020) < https://bit.ly/2x6XUIY> accessed 28 February 2020.

Financial Reporting Council of Nigeria, 'FRC exposes Nigerian code of corporate governance 2018' < https://bit.ly/2MAL9K6 > accessed 15 June 2018

Financial Reporting Council of Nigeria, 'National Code of Corporate Governance 2016' (2016).

Financial Reporting Council of Nigeria, 'Nigerian Code of Corporate Governance 2018' (2018) < https://bit.ly/2uqqKCY> accessed 16 June 2018.

Financial Reporting Council of Nigeria, 'Press Release: Guidance for reporting on Compliance with the Nigerian Code of Corporate Governance (NCCG) (2018)' (2020) available at < https://bit.ly/2MiNJsc> accessed 23 June 2020.

Financial Reporting Council, 'FRC reports on better compliance with UK Corporate Governance Code and need for improved adherence to the UK Stewardship Code' (*FRC News*, 15 January 2015) < https://bit.ly/2PlfsV6 > accessed 4 December 2018.

Foreign and Commonwealth Office, 'Travel Advice against all non-essential travel: Foreign Secretary's statement, 17 March 2020' < https://bit.ly/3nQGgON> accessed 20 November 2020.

FRC, 'Reporting on the new Corporate Governance Code is a mixed picture.' (2020) <https://bit.ly/2Kzb0po> accessed 18 January 2021.

FRC, 'UK Corporate governance code 2018' < https://bit.ly/2AKGqTm > accessed 28 January 2018.

FRCN, 'Latest development' < http://bit.ly/2ESn00B> accessed 20 January 2018.

Freigang J, 'Is Responsive Regulation Compatible with the Rule of Law?' (2002) 8 European Public Law 463.

Frith H and Gleeson K, 'Clothing and Embodiment: Men Managing Body Image and Appearance' (2004) 5 Psychology of Men & Masculinity 40.

Frynas J, 'Problems of access to courts in Nigeria: Results of a survey of legal practitioners' (2001) 10 Social and Legal Studies 397.

Gentz M and others, 'The role and effectiveness of the Aufsichtsrat (Supervisory Board) and stakeholder inclusiveness' (2020) International Corporate Governance Network < https://bit.ly/2Veq1zn> accessed 15 April 2020.

George Etomi & Partners, 'Nigeria: the financial reporting council of Nigeria - national code of corporate governance' (2017) *Mondaq* < https://bit.ly/2tiPIj9> accessed 2 June 2018.

Gill P and others, 'Methods of data collection in qualitative research: interviews and focus groups.' (2008) 204 British Dental Journal 291.

Goergen M, *International Corporate Governance* (Pearson 2012) 128.

Gordon J, 'The Mandatory Structure of Corporate Law' (1989) 89 Columbia Law Review 1549.

Guest G, Bunce A and Johnson L, 'How Many Interviews Are Enough? An Experiment with Data Saturation and Variability' (2006) 18 Field Methods 59.

Gunningham N and Grabosky P, *Smart Regulation – Designing Environmental Policy* (Clarendon Press Oxford 1998).

Gunningham N and Johnstone R, *Regulating Workplace Safety* (OUP 1999).

Gunningham N and Rees J, 'Industry Self-Regulation: An Institutional Perspective' (1997) 19 Law & Policy 363.

Gunningham N, 'Enforcement and Compliance Strategies' in Robert Baldwin, Martin Cave and Martin Lodge (eds), *The Oxford Handbook of Regulation* (OUP 2010).
Gunningham N, 'Negotiated Non-Compliance: A Case Study of Regulatory Failure' (1987) 9 Law and Policy 69.

Hage J, 'Comparative law as method and the method of comparative law' in Maurice Adams and Dirk Heirbaut (eds), *Essays in Honour of Mark van Hoecke* (Hart Publishing 2014).

Haines F, *Corporate Regulation: Beyond 'Punish or Persuade* (Clarendon Press 1997).

Hall B, 'What You Need to Know About Stock Options' Harvard Business Review < https://bit.ly/3aRd6sJ> accessed 3 April 2020.

Hawley J and Williams A, *The Rise of Fiduciary Capitalism: How Institutional Investors Can Make Corporate America More Democratic* (University of Pennsylvania Press 2000).

Hensen M and Ruback R, 'The Market for Corporate Control: The Scientific Evidence' (1983) 11 Journal of Financial Economics 5;

Hernandez M; 'Toward an Understanding of the Psychology of Stewardship' (2012) Academy of Management Review 172.

Hill C and Jones T, 'Stakeholder-Agency Theory' (1992) 29 Journal of Management Studies 134.

Hillman A and Dalziel T, 'Boards of directors and firm performance: integrating agency and resource dependence perspective' (2003) 28 Academy of Management Review 383.

Holmstrom B, 'Moral Hazard and Observability' (1979) 10 The Bell Journal of Economics 74.

Hopkins A and Wilkinson P, 'Safety Case Regulation for the Mining Industry' (2005) National Research Centre for Occupational Health and Safety Regulation Working Paper 37/2005.

Hsiu-Fang H and Shannon S, 'Three approaches to qualitative content analysis' (2005) 15 Qualitative Health Research 1277.

Hung H, 'A typology of the theories of the roles of governing boards' (1998) 6 Corporate Governance: An International Review 101.

Huse M, 'Boards of Directors in SMEs: A Review and Research Agenda' (2000) 12 Entrepreneurship and Regional Development 271.

Hutchinson T, 'Doctrinal research: Researching the jury' in Dawn Watkins and Mandy Burton (eds), *Research Methods in Law* (Routledge 2018) 13.

Hutter B, 'Regulating Employers and Employees: Health and Safety in the Workplace' (1993) 20 Journal of Law and Society 452.

International Monetary Fund, 'World Economic Outlook Database, October 2019' < https://bit.ly/36WlnbU> accessed 3 September 2019.

Inyang B, 'Corporate Governance Regulatory Framework in Nigeria: The Offerings and Challenges' in Capaldi N and others (eds), *Dimensional Corporate Governance. CSR, Sustainability, Ethics & Governance* (Springer 2017).

Israel M and Hay I, *Research Ethics for Social Scientists* (Sage Publications 2004) 94.

Jackson K, 'Towards a Stakeholder-Shareholder Theory of Corporate Governance: A Comparative Analysis' (2011) 7 Hastings Business Law Journal 309.

Jarrell G and others, 'The Market for Corporate Control: The Empirical Evidence Since 1980' (1988) 2 Journal of Economic Perspectives 49.

Jensen M and Meckling W, 'Theory of the firm: managerial behaviour, agency costs and ownership structure' (1976) 3 Journal of Financial Economics 305.

Jensen M, 'Value maximisation, stakeholder theory, and the corporate objective function' (2001) 7(3) European Financial Management 297.

Kagan R and Scholz J, 'The Criminology of the Corporation and Regulatory Enforcement Strategies', in Hawkins K and Thomas J (eds), *Enforcing Regulation* (Kluwer-Nijhoff 1984).

Kagan R, 'Regulatory Enforcement', in David Rosenbloom and Richard Schwartz (eds), *Handbook of Regulation and Administrative Law* (Dekker 1994).

Kaur G and Mishra R, 'Corporate governance failures in India: A study of Academicians perceptions.' (2010) 9 The IUP Journal of Corporate Governance 99.

Kesner M, Sim E and Tays T, 'Trends in Executive Compensation' (2019) Harvard Law School Forum on Corporate Governance < https://bit.ly/2Vc0Ps6> accessed 3 April 2020.

Khanna V and Zyla R, 'Survey says: corporate governance matters to investors in emerging market companies' (2017) World Bank Working Paper 114591 < https://bit.ly/3bj3Fmv> accessed 2 February 2020.

Kickert W, Klijn E and Koppenj J, *Managing Complex Networks: Strategies for the Public Sector* (SAGE Publications 2012).

Klapper L and Love I, 'Corporate governance, investor protection and performance in emerging markets' (2004) 10 Journal of Corporate Finance 708.

Klettner A, *Corporate Governance Regulation: The changing roles and responsibilities of boards of directors* (Routledge 2017).

Komolafe B, 'FRC moves to develop new National Code of Corporate Governance' *Vanguard* (Lagos, January 22, 2018) < http://bit.ly/2GokN9Z> accessed 25 January 2018.

KPMG Nigeria, 'Financial Reporting Council of Nigeria revokes "Rule 4"' (2019) < https://bit.ly/2uObUX9> accessed 28 February 2020.

KPMG Nigeria, 'The sea is history – the Companies and Allied Matters Act, 2020 aspires to optimize corporate regulation in Nigeria' (2020) < https://bit.ly/3v459Kd> accessed 30 August 2020.

Krambia-Kapardis M and Psaros J, 'The Implementation of Corporate Governance Principles in an Emerging Economy: a critique of the situation in Cyprus' (2006) 14 Corporate Governance: An International Review 126.

Kwarbai J, 'Concentrated Ownership Structure and Audit Quality: New Evidence from Nigeria' (2020) 5 European Journal of Business Management and Research 51.

La Porta R, Lopez-De-Silanes F and Shleifer A, 'Corporate Ownership Around the World' (2002) 54 The Journal of Finance 471.

La Porta R, Lopez-de-Silanes F and Shleifer A, 'What Works in Securities Laws?' (2006) 61 Journal of Finance 1.

Lapadat J and Lindsay A, 'Transcription in Research and Practice: From Standardization of Technique to Interpretive Positionings' (1999) 5 Qualitative Inquiry 64.

Latzer M and others, 'Regulation Remixed: Institutional Change through Self and Co-Regulation in the Mediamatics Sector' (2003) 50 Communications & Strategies 127.

Letza S, Sun X and Kirkbride J, 'Shareholding versus Stakeholding: a critical review of corporate governance' (2004) 12 Corporate Governance: An International Review 242.

Leung W, Song W and Chen J, 'Does Bank Stakeholder Orientation Enhance Financial Stability? Evidence from a Natural Experiment' (2016) Journal of Corporate Finance 52.

Lorsch Jay and MacIver E, *Pawns or Potentates: The Reality of America's Corporate Boards* (Harvard Business School Press 1989).

Losoncz I, 'Methodological approaches and considerations in regulatory research, in Peter Drahos (eds), *Regulatory Theory: Foundations and Applications* (ANU Press 2017) 77.

Lowe S, 'Research Report: Corporate Governance Review 2018' (*Grant Thornton*, 19 October 2018) <https://bit.ly/2KtKPy7> accessed 29 March 2019.

MacNeil I and Li X, '"Comply or Explain": Market Discipline and Non-Compliance with the Combined Code' (2006) 14 Corporate Governance: An International Review 486.

Mahoney P, 'The origins of the Blue-Sky Laws: a test of competing hypotheses' (2001) 46 Journal of Law and Economics 229.

Mallin C, *Corporate Governance* (Oxford University Press 2010).

Marshall J, 'Evolution of Corporate Governance Codes in Nigeria' (2015) 3 International Journal of Business and Law Research 49.

Masson R, 'Executive Motivations, Earnings, and Consequent Equity Performance' (1971) 79 Journal of Political Economics 1278.

Mbah F, 'Nigeria announces lockdown of major cities to curb coronavirus' *Aljazeera* (30 March 2020) <https://bit.ly/337rqeE> accessed 20 November 2020.

McConville M and Hong Chui W, *Research Methods for Law* (2nd edn, Edinburgh University Press 2017) 3.

McGrath C, '80% of equity market cap held by institutions' (*Pensions & Investments*, 25 April 2017) <https://bit.ly/2V6EGeV> accessed 3 April 2020.

McKnight P and Weir C, 'Agency costs, corporate governance mechanisms and ownership structure in large UK publicly quoted companies: A panel data analysis.' (2009) 49 The Quarterly Review of Economics and Finance 139.

McNulty T, Zattoni A and Douglas T, 'Developing Corporate Governance Research through Qualitative Methods: A review of previous studies' (2012) 2 Corporate Governance - An International Review 183.

McVie S, 'Challenges in Socio-Legal Empirical Research' (2011) Methods and Methodology in Creative Research CREATE UK < https://www.create.ac.uk/methods/> accessed 2 June 2019.

Meho L, 'E-mail interviewing in qualitative research: A methodological discussion' (2006) 57 Journal of the American Society for Information Science and Technology 1284.

Mitton T, 'A cross-firm analysis of the impact of corporate governance on the East Asian financial crisis.' (2002) 64 Journal of Financial Economics 215.

Molz R, 'Managerial domination of boards of directors and financial performance' (1988) 3 Journal of Business Research 235.

Moore M and Petrin M, *Corporate Governance: Law, Regulation and Theory* (Red Globe Press 2017) 58.

Murakozy B and Valentiny P, 'Alternatives to State Regulation: Self and Co-Regulation' (2015) Competition and Regulation 54.

Musselwhite K and others, 'The telephone interview is an effective method of data collection in clinical nursing research: a discussion paper.' (2007) 44 International Journal of Nursing Studies 1064.

Muth M and Donaldson L, 'Stewardship theory and board structure: a contingency approach' (1998) 6 Corporate Governance: An International Review 5.

Nakpodia F and others, 'Neither principles nor rules: Making corporate governance work in Sub-Saharan Africa' (2016) 151 Journal of Business Ethics 3.

Nakpodia F, 'An Assessment of Institutional Influences on Corporate Governance in Nigeria: A Multi-Stakeholder Perspective' (2016) Northumbria University <https://bit.ly/2UQvzPS> accessed 12 November 2018.

National Insurance Commission, 'Code of Good Corporate Governance for the Insurance Industry' (2008) para 1 < https://bit.ly/38z8u9z> accessed 15 February 2020.

National Pension Commission, 'Code of Corporate Governance for Licensed Pensions Operators' (2008) 2 < https://bit.ly/321LpK1> accessed 21 January 2020.

Navajyoti S, 'The impact of adopting shareholder primacy corporate governance on the growth of the financial market in developing countries' (2015) University of Sheffield 74 < https://bit.ly/2CVce6q> accessed 26 January 2019.

Nicholson G and Kiel G, 'A framework for diagnosing board effectiveness' (2004) 12 Corporate Governance: An International Review 442.

Nigeria Centre for Disease Control, 'Five new cases of coronavirus disease (COVID-19) confirmed in Nigeria' < https://bit.ly/3nSbxRv> accessed 20 November 2020.

Nigeria Deposit Insurance Corporation, 'List of closed financial institutions' (2020) < https://bit.ly/3co0cDw> accessed 23 February 2020.

Nigeria's Code of Governance: 2019 Opening Remarks By Okey Enalamah', *Proshare* Nigeria (Lagos, 27 March 2019) < https://bit.ly/2tE3G3t> accessed 29 January 2020.

Nigerian Communications Commission, 'Code of Corporate Governance for the Telecommunications Industry 2016' (2016) < https://bit.ly/2P1xr5F> 5 accessed 18 January 2020.

Nigerian Stock Exchange, 'Foreign Portfolio Investment Report: NSE Domestic and FPI Report December 2019' <https://bit.ly/2SlGRcY> accessed 23 January 2020.

North D, *Institutions, institutional change and economic performance* (CUP 1990).

NSE, CBI Honour Companies and Directors for Passing Corporate Governance Rating Assessment' *Proshare Nigeria* (23 February 2018) < https://bit.ly/2JN6VfT > accessed 10 June 2018.

O'Neill J, 'Who are you calling a BRIC?' *Bloomberg* (1 November 2013).

Oando PLC, 'Oando PLC's Position on the Securities and Exchange Commission's Alleged Findings' (2017) <https://bit.ly/2Mbu2mm> accessed 11 January 2020.

OECD, 'Methodology for Assessing the Implementation of the OECD Principles of Corporate Governance' (2007) <https://bit.ly/3igmvOT> accessed 11 January 2021.

OECD, 'Principles of Corporate Governance' (2004) 11.

OECD, *Corporate Governance Supervision and Enforcement in Corporate Governance* (OECD Publishing 2013) 12.

Ofo N, 'Code of Corporate Governance in Nigeria 2011: Its fourteen fortes and faults' (2011) <https://bit.ly/2SLKEAC> accessed 10 February 2020.

Ofo N, 'Corporate Governance in Nigeria: Prospects and Problems' (2010) < https://bit.ly/2JBqk3N> accessed 28 January 2019.

Ogbuozobe F, 'A consideration of the impact of the Companies and Allied Matters Act (1990) and the Insurance Act (2003) on the board of insurance companies in Nigeria' (2009) 51 International Journal of Law and Management 336 <https://bit.ly/2HcQu8D> accessed 3 February 2020.

Okike E and Adegbite E, 'The code of corporate governance in Nigeria: Efficiency gains or social legitimation?' (2012) 95 Corporate Ownership and Control 262.

Okike E, 'Corporate governance in Nigeria: The status quo' (2007) 15 Corporate Governance: An International Review 173.

Okpala K, 'Fiscal accountability dilemma in Nigeria public sector: A warning model for economic retrogression.' (2012) 3 Research Journal of Finance and Accounting 113.

Ong C and Lee S, 'Board functions and firm performance: A review and directions for future research' (2000) 3 Journal of Comparative International Management 18.

Osemeke L and Adegbite E, 'Regulatory multiplicity and conflict: Towards a combined code on corporate governance in Nigeria' (2016) 133 Journal of Business Ethics 431.

Oxford Analytica, *Board Directors and Corporate Governance: Trends in the G7 Countries Over the Next Ten Years – Executive Report* (Oxford Analytica Limited 1992) 13.

Padgett C, *Corporate Governance: theory and practice* (Palgrave Macmillan 2012) 137.

Parker C and Nielsen V, 'Do Businesses Take Compliance Systems Seriously? An Empirical Study of Implementation of Trade Practices Compliance Systems in Australia?' (2006) 30 Melbourne University Law Review 441.

Parker C, 'Compliance Professionalism and Regulatory Community: The Australian Trade Practices Regime' (1999) 26 Journal of Law and Society 215.

Parker C, *The Open Corporation Effective Self-Regulation and Democracy* (CUP 2002) 245; Klettner (n 330).

Parker C, *The Open Corporation: Effective Self-regulation and Democracy* (CUP 2002) 246.

Patton M, 'Enhancing the quality and credibility of qualitative analysis' (1999) 34 Health Services Research 1189; Norman Denzin, *Sociological methods: a sourcebook* (Routledge 2017).

Patton M, *Qualitative evaluation and research* methods (Sage Publications 1990).

Peng M and Heath P, 'The Growth of the Firm in Planned Economies in Transition: Institutions, Organizations, and Strategic Choice (1996) 21 The Academy of Management Review 492.

Peng M and Zhou H, 'How Network Strategies and Institutional Transitions Evolve in Asia' (2005) 22 Asia Pacific Journal of Management 321.

Pfeffer J, 'Size and Composition of Corporate Boards of Directors: The Organization and its Environment' (1972) 17 Administrative Science Quarterly 218.

Phillips O, Amadi M and Emeifeogwu T, 'Nigeria' in Willem J Calkoen (eds), *The Corporate Governance Review* (7th edn, The Law Review, 2019).

Porter M, 'Capital Choices: Changing the way America invests in industry' (1992) Journal of Applied Corporate Finance 4.

Prime Minister's Office, 'Prime Minister's statement on coronavirus (COVID-19): 23 March 2020' <https://bit.ly/3nNrybi>accessed 20 November 2020.

Ramon O, 'Court adjourns Francis Atuche, Ojo's N125bn fraud trial' *Punch Newspapers* (Lagos, 14 March 2019) < https://bit.ly/2HmHrEd > accessed 17 March 2019.

Rechner P and Dalton D, 'CEO duality and organisational performance: A longitudinal analysis' (1991) 12 Strategic Management Journal 155.

Renneboog L and Trojanowski G, 'The managerial labour market and the governance role of shareholder control structures in the UK' (2002) 68 Tilburg Centre for Economic Research 2.

Ribstein L, 'Cross-listing and Regulatory Competition' (2004) Review of Law and Economics 26.

Romney K, Weller S and Batchelder W, 'Culture as consensus: A theory of culture and informant accuracy' (1986) 88 American 313.

Rose P, 'Shareholder Proposals in the Market for Corporate Influence' (2014) 66 Florida Law Review 2179.

Rowell D and Connelly L, 'A history of the term "moral hazard"' (2012) 79 The Journal of Risk and Insurance 1051.

Salihu H and Gholami H, 'Corruption in the Nigeria Judicial System: An Overview' (2018) 25 Journal of Financial Crime 668.

Sanderson P, Seidl D, and Roberts R, 'The limits of flexible regulation: managers' perceptions of corporate governance codes and comply-or-explain' (2013) University of Cambridge Centre for Business Research 439/2006, 5 < https://bit.ly/2UT0fR7> accessed 23 March 2020.

Scott R, 'Institutional theory' In George Ritzer (eds), *Encyclopedia of Social Theory* (Sage 2004).

Scott R, *Institutions and Organizations* (Sage Publication 1995).

SEC Nigeria, 'Press Release on Investigation of Oando Plc' (2019) <https://bit.ly/32v9RUm> accessed 21 February 2020.

SEC Nigeria, 'Press Release on Investigation of Oando Plc' (2019) <https://bit.ly/32v9RUm> accessed 21 February 2020.

SEC Nigeria, 'Public Notice: Notice to the General Public on Oando Plc' (2017) <https://bit.ly/2w76mrg> accessed 21 February 2020.

SEC Nigeria, 'Public Notice: Notice to the General Public on Oando Plc' (2017) <https://bit.ly/2w76mrg> accessed 21 February 2020.

SEC Nigeria, 'What we do' < https://bit.ly/2PskUbu> accessed 26 February 2020.

SEC, 'Code of Corporate Governance for Public Companies in Nigeria' (2014) < https://bit.ly/32zfpNv> accessed 21 February 2019.

SEC, 'Code of Corporate Governance for Public Companies' <https://bit.ly/2XKarxs> accessed 28 December 2018;

Securities and Exchange Commission Nigeria, 'SEC Corporate Governance Guideline and Revised FORM 01' (2020) available at <https://bit.ly/3sSiqFJ> accessed 11 October 2020.

Securities and Exchange Commission, 'Code of Best Practices for Public Companies' (2003).

Securities and Exchange Commission, 'Code of Corporate Governance for Public Companies' (2011).

Senate of the Federal Republic of Nigeria, 'Summary: Benefits of the Companies and Allied Matters Act (CAMA) (Repeal and Re-enactment) Bill, 2018 (SB. 355)' < https://bit.ly/2SFFN45> accessed 3 February 2020.

Shapiro S and Rabinowitz R, 'Punishment versus Cooperation in Regulatory Enforcement: A Case Study of OSHA' (1997) 14 Administrative Law Review 713.

Shapiro S, 'Agency Theory' (2005) 31 Annual Review of Sociology 263.

Shleifer A and Vishny R, 'A survey of corporate governance' (1997) 52 The Journal of Finance 737.

Sinclair D, 'Self-Regulation Versus Command and Control? Beyond False Dichotomies' (2002) 19 Law & Policy 529.

Social Research Association, 'Ethical Guidelines' (2003) 35 < https://bit.ly/11GISE9> accessed 1 June 2019.

Solomon J, *Corporate Governance and Accountability* (John Wiley & Sons 2007).

Stemler S, 'An overview of content analysis' (2001) 7 Practical Assessment, Research and Evaluation 137.

Sternberg E, 'The defects of stakeholder theory' (1997) 5 Corporate Governance: An International Review 3.

Stigler G, 'The theory of economic regulation' (1971) 2 The Bell Journal of Economics and Management Science 3.

Sturges J and Hanrahan K, 'Comparing Telephone and Face-to-Face Qualitative Interviewing: a Research Note' (2004) Qualitative Research 107.

Suchman M, 'Managing Legitimacy: Strategic and Institutional Approaches.' 20 (1995) Academy of Management Review 571.

Sun M, 'More U.S. Companies Separating Chief Executive and Chairman Roles' (2019) Risk & Compliance Journal < https://on.wsj.com/2Xz8DXT> accessed 11 April 2020.

Taylor B, 'Corporate Governance: The Crisis, Investors' Losses and the Decline in Public Trust' (2003) 11 Corporate Governance 155.

The Convention on Business Integrity, 'Corporate Governance Ratings System' <https://bit.ly/2E7JwPh > accessed 10 June 2018.

The Nigeria Stock Exchange, 'NSE, CBI Launched Corporate Governance Rating System' (2014) <https://bit.ly/2K13am1> accessed 10 June 2018.

The Nigerian Stock Exchange, 'Circular on CGRS Incentives and Use of the CGRS Rated Badge.

The Nigerian Stock Exchange, 'Corporate Overview' (2020) <https://bit.ly/2vrAaP7> accessed 27 February 2020.

The Nigerian Stock Exchange, 'Premium Board' (2020) < https://bit.ly/2witYt3> accessed 28 February 2020.

The Nigerian Stock Exchange, 'Rulebook of the Nigerian Stock Exchange' (2015) < https://bit.ly/2KpItij> accessed 28 February 2020.

The Nigerian Stock Exchange, 'Rulebook of the Nigerian Stock Exchange' (2015) < https://bit.ly/2KpItij> accessed 28 February 2020.

The Nigerian Stock Exchange, 'X-Compliance Report' (2020) <http://www.nse.com.ng/Listings-site/corporate-disclosure-site/Documents/X-Compliance.pdf> accessed 28 February 2020.

The World Bank, 'GNI per capita, Atlas method (current US$)' < https://bit.ly/2Zgptsb> accessed 29 May 2019.

The World Bank, 'Nigeria - Report on the observance of standards and codes (ROSC)' (2004) <https://bit.ly/2ucvdFR> 8 accessed 19 February 2019.

The World Bank, 'Nigeria - Report on the observance of standards and codes (ROSC)' (2011) <https://bit.ly/2CtZSTq > 7 accessed 19 February 2019.

The World Bank, *Doing Business 2020* (World Bank Publications, 2019).

Thornton D, Gunningham N and Kagan R, 'General Deterrence and Corporate Behaviour' (2005) 27 Law and Policy 262.

Tijani M, 'FRC suspends Stanbic IBTC directors, KPMG' *The Cable* (26 October 2015) < https://bit.ly/3aAdv2j > accessed 28 February 2020.

Tosi H, Katz J and Gomez-Mejia L, 'How Much Does Performance Matter? A Meta-Analysis of CEO Pay Studies' (2000) 26(2) Journal of Management 301.

Tricker B, *The Pocket Director* (Economist 1996).

Turnbull S, 'Corporate governance: its scope, concerns and theories' (1997) 5 Corporate Governance: An International Review 188.

United Nations Conference on Trade and Development (UNCTAD), *World Investment Report 2019: Special Economic Zones* (United Nations Publications, 2019).

Usa I, *Nigeria: Doing Business and Investing in Nigeria Guide* (2nd edn, International Business Publications, 2019).

Van Hoecke M, 'Legal cultures, legal traditions and comparative law' (2006) Netherlands Journal of Legal Philosophy 331.

Vanguard, 'CBN sacks Adenuga, Bank PHB, ETB, Spring Bank MDs' (*Vanguard Newspapers*, 3 October 2009) < https://bit.ly/3cnyQxt> accessed 28 February 2020.

Vidal J, Draca M and Fons-Rosen C, 'Revolving Door Lobbyists' (2012) 102 The American Economic Review 3731.

Walford G, 'Classification and Framing of Interviews in Ethnographic Interviewing' (2007) 2 Ethnography and Education 145.

Wanyama S, Burton B and Helliar C, 'Frameworks underpinning corporate governance: evidence on Ugandan perceptions' (2009) 17 Corporate Governance: An International Review 159.

Watkins D and Burton M (eds), *Research Methods in Law* (Routledge 2018) 4.
Weir C, Laing D and McKnight P, 'Internal and external governance mechanisms: their impact on the performance of large UK public companies' (2002) 29 Journal of Business Finance & Accounting 579.

Wengraf T, *Qualitative Research Interviewing: Biographic Narrative and Semi-Structured Methods* (SAGE Publications 2001).

Werder A, Talaulicar T and Kolat G, 'Compliance with the German Corporate Governance Code: an empirical analysis of the compliance statements by German listed companies' (2005) 13 Corporate Governance: An International Review 178.

Westerman P, 'Open or Autonomous? The Debate on Legal Methodology as a Reflection of the Debate on Law', in Mark Van Hoecke (eds), *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011).

What's in a Name? Defining emerging markets', *The Economist* (5 October 2017) < https://econ.st/2ETVJtq> accessed 29 May 2019.

Whittington G, 'Corporate Governance and the Regulation of Financial Reporting' (1993) 23 Accounting and Business Research 311.

Wiseman R, Cuevas-Rodriguez G and Gomez-Mejia L, 'Toward a Social Theory of Agency' (2012) 49 Journal of Management Studies 202.

World Bank, 'Nigeria Overview' < https://bit.ly/3ew0XfC> accessed 23 January 2020.

World Health Organisation, 'Coronavirus disease (COVID-19)' <https://bit.ly/3nIrYj9> accessed 20 November 2020.

World Justice Project, *Rule of Law Index* (World Justice Project 2019) 5.

Young M and others, 'Corporate governance in emerging economies: A review of the principal-principal perspective' (2008) 45 Journal of Management Studies 196.

Zuckerman H, 'Interviewing an ultra-elite' (1972) 36 Public Opinion Quarterly 159; Darren Lilleker, 'Interviewing the political elite: Navigating a potential minefield' (2003) 23 Politics 207.

Zulfiqar S and Butt S, 'The impact of corporate governance on the cost of equity: empirical evidence from Pakistani listed companies' (2009) 14 The Lahore Journal of Economics 139.

Zweigert K and Kötz H, *An Introduction to Comparative Law* (OUP 1998) 15.

Appendices

Appendix 1: Ethical Approval

Aston University
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United Kingdom

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16 December 2019

Dr Daniel Cash
Student: Oluwarotimi Adeniyi-Akintola

Dear xx,

Study title:	The Efficacy of Mandatory Corporate Governance Regulation in Emerging Markets: The Case of Nigeria
REC REF:	#ABSREC008

Confirmation of Favourable Ethical Opinion

On behalf of the Committee, I am pleased to confirm a favourable opinion for the above research on the basis of the application described in the application form, protocol and supporting documentation listed below.

Approved documents

The final list of documents reviewed and approved by the Committee is as follows.

Document	*Version*	*Date*
Participant Information Sheet	3	1/12/2019
Consent Form	2	16/12/2019
Approach letter	1	13/12/2019
Interview guide	1	13/12/2019
Travel Risk assessment		21/11/2019

After starting your research please notify the University Research Ethics Committee of any of the following:

- Amendments. Any amendment should be sent as a Word document, with the amendment highlighted or showing tracked changes. The amendment request must be accompanied by a covering letter along with all amended documents, e.g. protocols, participant information sheets, consent forms etc. Please include a version number and amended date to the file name of any amended documentation (e.g. "Ethics Application #100 Protocol v2 amended 17/02/19.doc").

Amendment requests should be outlined in a "Notice of Amendment Foem" available by emailing research_governance@aston.ac.uk.

- Unforeseen or adverse events e.g. disclosure of personal data, harm to participants.
- New Investigators
- End of the study

Please email all notifications or queries to research_governance@aston.ac.uk and quote your UREC reference number with all correspondence.

Wishing you every success with your research.

Yours sincerely

Professor James Wolffsohn
Acting Chair, University Research Ethics Committee

Appendix 2: Participant Information Sheet

Aston University

Aston Business School

The Efficacy of Mandatory Corporate Governance Regulation in Emerging Markets: The Case of Nigeria.

Participant Information Sheet

Invitation

We would like to invite you to take part in a research study.

Before you decide if you would like to participate, take time to read the following information carefully and, if you wish, discuss it with others such as your family, friends or colleagues.

Please ask a member of the research team, whose contact details can be found at the end of this information sheet, if there is anything that is not clear or if you would like more information before you make your decision.

What is the purpose of the study?

The purpose of this research study is to investigate whether mandatory corporate governance regulation can resolve the challenges to good corporate governance identified in Nigeria. This is against the backdrop of the introduction of mandatory corporate governance regulation by the Securities and Exchange Commission in 2014, and the subsequent issuance of the Nigerian Code of Corporate Governance 2018 by the Financial Reporting Council of Nigeria.

Why have I been chosen?

You are being invited to participate in this study on the basis of your wealth of experience with regards to corporate governance matters in Nigeria. The criteria used to determine this status is your position as:

1. a company secretary (including assistants), member of the board directors, or a senior manager of a company listed on the Nigerian Stock exchange;
2. leading partner or senior personnel at a corporate governance advisory firm;
3. an institutional investor or shareholder; or
4. a key official in the corporate governance department of either the Securities and Exchange Commission or the Financial Reporting Council.

REC ID: [ABSREC008], [04] [16/12/2019]

It is believed that the communication of your experience will facilitate the attainment of the research objectives.

What will happen to me if I take part?

Your participation in this research project would involve a brief introductory meeting followed by an interview. The introductory meeting could take place via telephone or email, with the primary purpose of discussing the nature of the research and establishing a location and time for the conduct of the interview. The interview will be restricted to a maximum of an hour in duration, and will be based on your experience and personal capacity as a stakeholder in corporate governance.

All data collected through this study will be anonymised, and names of organisations and people will be removed. Electronic copies of interviews will be stored securely on a secure network, and hard copies will be stored in a locked compartment.

Do I have to take part?

No. It is up to you to decide whether or not you wish to take part.

If you do decide to participate, you will be asked to sign and date a consent form. You would still be free to withdraw from the study at any time without giving a reason.

How will the conversation during the interview be recorded and the information I provide managed?

With your permission we will audio record the interview and take notes during the interview. The recording will be by way of encrypted and password protected voice recorders, which will only be handled by the primary researcher.

The recording will be typed into a document (transcribed) by a transcriber approved by Aston University. All generated transcripts will be anonymised, which means that during this process, we will remove any information which could be used to identify individuals e.g. names, addresses, place of work, locations etc.

Audio recordings will be destroyed as soon as the transcripts have been checked for accuracy.

We will ensure that anything you have told us that is included in the transcript and the reporting of the study will be anonymous.

You of course are free not to answer any questions that are asked without giving a reason.

REC ID: [ABSREC008], [04] [16/12/2019]

Will my taking part in this study be kept confidential?

Yes. A code will be attached to all the data you provide to maintain confidentiality.

Your personal data (name and contact details) will only be used if the researchers need to contact you to arrange study visits or collect data by phone. Analysis of your data will be undertaken using coded data.

The data we collect will be stored in a secure document store (paper records) or electronically on a secure encrypted mobile device, password protected computer server or secure cloud storage device.

To ensure the quality of the research, Aston University may need to access your data to check that the data has been recorded accurately. If this is required, your personal data will be treated as confidential by the individuals accessing your data.

What are the possible benefits of taking part?

While there are no direct benefits to you of taking part in this study, the data gained will help generate an understanding of the efficacy of recent corporate governance reforms, and will contribute to the development of efficient corporate governance regulatory strategies in Nigeria.

What are the possible risks and burdens of taking part?

The major risk involved is the risk of identification i.e. that other people are able to ascertain your identity through your comments. This could potentially result in embarrassment, reputational damage, and in the extreme, may negatively impact upon your job security. The burden of taking part mainly comprises of the time taken to conduct the interview.

As stated above, the risk of identification and disclosure will be mitigated by the secure processing and anonymisation of your personal data in order to maintain confidentiality and guard against the risk of disclosure. The recordings will be conducted using encrypted and password protected recording devices. All information that could be used to identify you will be removed, and the audio recordings will be destroyed as soon as the transcripts are verified. In addition, you will be given the opportunity to select a discreet venue for the conduct of the interview in order to minimise the risk of exposure.

In mitigation of the burden of participation, the interview will be scheduled at a date and time that is most convenient for you, and the length will be restricted to a maximum duration of one hour.

REC ID: [ABSREC008], [04] [16/12/2019]

What will happen to the results of the study?

The results of this study may be published in academic journals and/or presented at conferences. If the results of the study are published, your identity will remain confidential. The results of the study will also be used in Oluwarotimi Adeniyi-Akintola's PhD thesis.

A lay summary of the results of the study will be available for participants when the study has been completed and the researchers will ask if you would like to receive a copy.

Expenses and payments

There are no provisions for expenses and payments.

Who is funding the research?

The study is being funded and supported entirely by the Aston Business School. No external organisation is involved in this study.

Who is organising this study and acting as data controller for the study?

Aston University is organising this study and acting as data controller for the study. You can find out more about how we use your information in Appendix A.

Who has reviewed the study?

This study was given a favourable ethical opinion by the University Research Ethics Committee.

What if I have a concern about my participation in the study?

If you have any concerns about your participation in this study, please speak to the research team and they will do their best to answer your questions. Contact details can be found at the end of this information sheet.

If the research team are unable to address your concerns or you wish to make a complaint about how the study is being conducted you should contact the Aston University Research Integrity Office at research_governance@aston.ac.uk or telephone 0121 204 3000.

REC ID: [ABSREC008], [04] [16/12/2019]

Research Team

1. Primary Researcher

Oluwarotimi Adeniyi Akintola - adeniyo3@aston.ac.uk

2. Supervisory Team
   a. Dr Daniel Cash (Primary Supervisor)

      Email: d.cash@aston.ac.uk
      Phone: +44(0)121 204 5075

   b. Mr Robert Goddard (Associate Supervisor)

      Email: r.j.goddard@aston.ac.uk
      Telephone: +44(0)121 204 3108

Thank you for taking time to read this information sheet. If you have any questions regarding the study, please do not hesitate to ask one of the research team.

REC ID: [ABSREC008], [04] [16/12/2019]

Appendix A: Transparency statement

Aston University takes its obligations under data and privacy law seriously and complies with the General Data Protection Regulation ("GDPR") and the Data Protection Act 2018 ("DPA").

Aston University is the sponsor for this study based in the United Kingdom. We will be using information from you in order to undertake this study. Aston University will process your personal data in order to register you as a participant and to manage your participation in the study. It will process your personal data on the grounds that it is necessary for the performance of a task carried out in the public interest (GDPR Article 6(1)(e). Aston University may process special categories of data about you which includes details about your health. Aston University will process this data on the grounds that it is necessary for statistical or research purposes (GDPR Article 9(2)(j)). Aston University will keep identifiable information about you for 6 years after the study has finished.

Your rights to access, change or move your information are limited, as we need to manage your information in specific ways in order for the research to be reliable and accurate. If you withdraw from the study, we will keep the information about you that we have already obtained. To safeguard your rights, we will use the minimum personally identifiable information possible.

You can find out more about how we use your information at www.aston.ac.uk/dataprotection or by contacting our Data Protection Officer at dp_officer@aston.ac.uk.

If you wish to raise a complaint on how we have handled your personal data, you can contact our Data Protection Officer who will investigate the matter. If you are not satisfied with our response or believe we are processing your personal data in a way that is not lawful you can complain to the Information Commissioner's Office (ICO).

Appendix 3: Consent Form

Aston University

Aston Business School

The Efficacy of Mandatory Corporate Governance Regulation in Emerging Markets: The Case of Nigeria.

Consent Form

Name of Chief Investigator: Oluwarotimi Adeniyi-Akintola

Please initial boxes

1.	I confirm that I have read and understand the Participant Information Sheet (V4, dated 16/12/2019) for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.	
2.	I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason and without my legal rights being affected.	
3.	I agree to my personal data and data relating to me collected during the study being processed as described in the Participant Information Sheet.	
4.	I agree to my interview being audio recorded and to anonymised direct quotes from me being used in publications resulting from the study.	
5.	I agree to my personal data being processed for the purposes of inviting me to participate in future research projects. I understand that I may opt out of receiving these invitations at any time.	
6.	I agree to take part in this study.	

Name of participant	Date	Signature
Name of Person receiving consent.	Date	Signature

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Appendix 4: Interview Guide

Aston University

Aston Business School

Interview Guide

Research Project: The Efficacy of Mandatory Corporate Governance Regulation in Emerging Markets: The Case of Nigeria

1. **Background**

   a. Please briefly outline your job description and expertise in the field of corporate governance.
   b. From your background as a key stakeholder, how would you assess the present state of corporate governance in Nigeria?

2. **SEC Corporate Governance Regulatory Style 2014**

   a. Do you believe that regulators should demand mandatory compliance with corporate governance standards, and impose fines for non-compliance?
   b. The SEC in 2014 stated that companies that violate its code of corporate governance would be liable to a fine of N500,000. Do you think this sort of approach is sufficient to encourage compliance with corporate governance standards?
   c. Has the SEC been able to monitor and enforce the 2014 mandatory approach?
   d. What do you think, if any, are the SEC's major obstacles in its corporate governance capacity?

3. **Nigerian Code of Corporate Governance 2018**

   a. What do you think about the Financial Reporting Council's participation in corporate governance regulation?
   b. What do you make of the Nigerian Code of Corporate Governance 2018, and has it affected the SEC's corporate governance oversight?

4. **Necessary Reforms.**
   a. Do you think that the regulation of corporate governance in Nigeria is effective?
   b. In your opinion, what are the main governance reforms you consider necessary to improve corporate governance standards in Nigeria?
   c. What effect does the existence of multiple regulators in Nigeria have on corporate governance?

5. **General.**
   a. Are there any other insights you would like to share?
   b. Is the Covid-19 pandemic affecting your governance operations?

   Thank you.