

INVESTIGATORY FUNCTIONS AND CHALLENGES OF THE NIGERIA CORPORATE AFFAIRS COMMISSION (CAC) IN CORPORATE GOVERNANCE FROM THE REGULATORY PERSPECTIVE*

Abstract

The importance of an effective regulatory body in a growing economy cannot be overemphasized. The key issue in corporate regulation is ensuring that management performs their duties in order to meet the legitimate expectations of the shareholders and other stakeholder. The paper aims to examine the investigatory functions and challenges of the Nigeria Corporate Affairs Commission in corporate governance from the regulatory perspectives. It reveals that the power of investigation which is expected to be a good weapon in achieving its aims has also become a casualty in which the commission operates. Instead of an attempt to provide a holistic legislative solution, what has happened thus far, is an ad hoc approach to any particular sector of the economy as the occasion demands. While the legislature may anticipate that issues of corporate governance should be resolved via judicial activism which in recent years, has become one of the most widely discussed topic in corporate governance, in which some commentators consider that activists enhance value and that they should be encouraged, while other commentators consider that activists enhance short term value at the expense of long-term value and that they should be discouraged. At the heart of this commentary is an important question regarding the investigatory functions and challenges of the Nigeria Corporate Affairs

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Commission in corporate governance. This paper will consider this question with a view to suggesting a direction for repositioning the Corporate Affairs Commission by recommending comprehensive legislative approach to the challenges of corporate regulation in Nigeria.

1.0 Introduction

The Corporate Affairs Commission (CAC) was established by Section 1 of the Companies and Allied Matters Act¹. It is a regulatory body in Nigeria, established to regulate the incorporation, running and winding up of companies, business names and incorporated trustees, in accordance with the Companies and Allied Matters Act (CAMA). While performing these functions it has the enabling powers entrenched in it by law to aid in carrying out its functions.

There is the need for the law to properly regulate business in order to balance the various interest including that of the society which is one of the cardinal objectives of law. The increasing economic power of public and multinational corporations and the implications of the separation of ownership from control in such companies have thrown up a number of interrelated problems. These include but not limited to abuse of power by the directors, the struggle to make the directors truly accountable and responsible to the corporate stakeholders has continued to be of concern to company regulators and legislators. Traditionally, efforts, to achieve this have always been through an increase in the information to be made available to the stakeholders (principle of disclosure) and issues that need to either be discussed or ratified by the shareholders at general meeting.

¹ Cap C20 Laws of the Federation of Nigeria 2004.

With the emergence of globalization, it was soon realized that the law need to be fortified in order to provide a fair and necessary balance between directors' and stakeholders interest. In England² and the United States³ it has been recognized that what is needed is a watchdog empowered to take action on behalf of the stakeholders either by investigation, inspection, or institution of civil and criminal proceedings, in deserving cases.

The key issue in corporate regulation is ensuring that management performs their functions in order to meet the legitimate expectations of the shareholders and other stakeholders. In the words of Gower:

It is now widely recognized in all countries that the only effective way of preventing impropriety in the management of corporate enterprise is to ensure effective supervision by some government agency. The idea that shareholders can be relied upon to supervise management and to take effective steps to protect themselves is an anachronism... Even if shareholders have the determination and the financial means they will often lack the inside knowledge of the fact which is needed before any legal action can be commenced⁴.

² L. Paul Davies. *Gower's Principle of Modern Company Law* (8th ed.) (London: Sweet and Maxwell 2010), p. 78.

³ In the United States, there is a system of private enforcement in which an Attorney suo motu investigate a perceived misconduct and institute an action for appropriate remedy. See J.C. Coffee. "Understanding the Plaintiff's Attorney: The Implication of Economic Theory for Private Enforcement of Law through Class Actions" (1986) Vol. 86 Colum L Rev p. 678.

⁴ Final Report of the Commission of Enquiry into the Working and Administration of the Company Law on Ghana quoted by C.O Okonkwo. "The Corporate Affairs Commission" in E.O. Akanki. *Essays on Company Law* (Lagos: University of Lagos Press, 1992), p. 163

Lord Denning M.R. while dealing with a matter relating to the power of investigation by a regulatory body has said:

It sometimes happens that public companies are conducted in a way which is beyond the control of the ordinary shareholders. The majority of the shares are in the hands of two or three individuals. These have control of the company's affairs. The other shareholders know little and are told little. They receive the glossy annual reports. Most of them throw them into the wastepaper basket. There is an annual general meeting, but few of the shareholders attend. The whole management and control is in the hands of the directors. They are a self-perpetuating oligarchy and virtually unaccountable. Seeing that the directors are the guardians of the company, the question is asked: *quis custodiet ipsos custodes?* Who will guard the guards themselves⁵?

Thus regulatory institutions are important and they are expected to set standards for corporations in every sphere considered important by the law and regulations in force at any material time. In specific terms, external regulators set standards for corporations on issues such as registration, disclosures, filling of returns⁶ etc.

Company law in Nigeria is foreign to Nigeria and it was incorporated into the Nigeria legal system through the received English law. It has undergone numerous evolutions ranging from The Companies Ordinance, 1912, The Companies Ordinance, 1922, The Companies Act, 1968 to the Companies and Allied Matters Act, 1990 now 2004 with remarkable innovations included.

⁵ Northwest Hoist Ctd v Department of Trade and Others (1978) All E.R 280.

⁶ Abdul-Hamid Oba Yusuf. "Corporate Regulation in Nigeria: Investigatory Functions and Challenges of the Corporate Affairs Commission (CAC)" (April 2016) Vol. 2 No. 1 Port Harcourt Journal of Business Law, Faculty of Law, Rivers State University of Science and Technology, Port Harcourt Nigeria, pp. 14 – 16

Prior to the establishment of the CAC, the administration and regulation of companies in Nigeria was steered by the Registrar of companies in the Corporate Affairs Division of the Ministry of Trade⁷. In fact, its organization and staffing were the joint responsibility of the Ministry of Trade and Ministry of Justice. It should be noted that despite the fact that the company Registry was a revenue generating government agency, it was however, fraught with inadequacies and shortcomings as it was starved of funds and other necessary facilities. It was in this light that the Nigerian law Reform Commission embarked on a law reform programme in 1987. Upon several deliberations, the commission came up with the view of having an autonomous body for the regulatory body to perform its functions adequately. The Law Reform Commission borrowed the practice prevalent in other countries like England and India and recommended the establishment of the Corporate Affairs Commission⁸.

The CAC was established by Section 1 of the Companies and Allied Matters Act as a corporate body with perpetual succession and a common seal, capable of suing and being sued in its corporate name and of acquiring, holding or disposing of all types of property for the purposes of its function. Most importantly, the CAC was created to administer the Act.

The Governing Board of the commission consists of the following:

- a. The chairman who is appointed by the president of the Federal Republic of Nigeria on the recommendation of the ministers being a person who by reason of his ability, experience or specialized

⁷ J. Olakunle Orojo. *Company Law and Practice in Nigeria* (5th ed.) (London: Lexis Nexis Butterworth, 2008), p. 23.

⁸ MN. Umenweke. "Powers and Duties of the Corporate Affairs Commission as a Regulatory Body in Nigeria" <<http://www.ajol.info/index.php/naujilj/article/download/82382/72538>> Accessed 22nd October 2017, p. 15.

knowledge of corporate, industrial, commercial, financial or economic matters or of business or professional attainments would in his opinion be capable of making outstanding contributions to the work of the commission;

- b. A representative of the business community, appointed by the minister on the recommendation of the Nigeria Association of Chambers of Commerce, Industries, Mines and Agriculture;
- c. A representative of legal profession appointed by the minister on the recommendation of the Nigerian Bar Association;
- d. A representative of the accountancy profession, appointed by the minister on the recommendation of the institute of Chartered Accountant of Nigeria;
- e. A representative of the Manufacturers Association of Nigeria, appointed by the minister on the recommendation of the Association;
- f. A representative of the Security and Exchange Commission not below the grade of directors or its equivalent;
- g. A representative of each of the following federal ministries i.e. commerce, justice and industry;
- h. The Registrar-General of the commission⁹.

It is worthy to note, that the Registrar-General is the chief executive of the commission and is saddled with the responsibility of its day-to-day management. Except the Registrar-General, The Chairman and members are appointed to work on a part-time basis¹⁰.

⁹ Section 2 Companies and Allied Matters Act (CAMA) (Ibid).

¹⁰ Section 3(3) Companies and Allied Matters Act (CAMA) (Ibid).

The headquarters of the commission shall be situated in the Federal Capital Territory, Abuja, and there shall be established an office of the commission in each state of the federation¹¹.

Section 8 of the Companies and Allied Matters Act provides for the appointment of a Registrar-General for the commission, who is to be appointed by the commission, after which he becomes a member of the commission. To be eligible for appointment as a Registrar-General of the CAC, an individual must have been qualified to practice law in Nigeria for not less than ten (10) years and in addition, has had experience in company law practice or administration for not less than eight (8) years. The Registrar-General is chief executive officer of the commission and he is subject to the directives of the commission. He is also the chief accounting officer of the commission and qualified to personally represent the commission in legal proceedings in court. That is, he is competent to practice as a solicitor and Barrister for the purposes of his office.

By the provision of Section 3 (4) of the Companies and Allied Matters Act a member of the commission ceases to hold office, if he becomes of unsound mind or is otherwise capable of carrying out his duties as a member. Other condition which could lead to the termination of membership of the commission include bankruptcy, conviction for an offence, involving dishonestly in felony, serious misconduct connected to his duties, or where he is a professional, if he is disqualified, removed or suspended from practicing his profession by a competent authority other than at his request.

Quorum of the meeting of the commission is five¹², excluding the representatives of the Institute of Chartered Secretaries and

¹¹ Section 1(3) Companies and Allied Matters Act (CAMA) (Ibid).

¹² Section 5(3) Companies and Allied Matters Act (CAMA) (Ibid).

Administrators, the Securities and Exchange Commission and the ministries. The exclusion of the representatives of the ministries from quorum is understandable as the CAMA presumably treated them as a part of the establishment, even then one will expect that the Registrar-General will be included in the list as those excluded cannot be more establishment than him. But what is even strange is the exclusion of the representatives of the Institute of Chartered Secretaries and Administrators (ICSA) and Securities and Exchange Commission (SEC). This may also be due to the interest they represent. Their presence may be treated as very important and therefore not necessarily representative of the diverse views necessary for a good deliberation at the meeting of the commission.

Therefore, this paper examines the investigatory functions and challenges of the Nigeria Corporate Affairs Commission in corporate governance from the regulatory perspective with a view to showing and indicating the way forward. In doing this the paper will examine: functions and powers of the Nigerian Corporate Affairs Commission; powers of the Corporate Affairs Commission (CAC) to investigate the affairs of companies; Corporate Affairs Commission: the regulatory challenges to Nigeria; conclusion and policy recommendation.

2.0 Functions and Powers of the Nigeria Corporate Affairs Commission

Section 7 of the Companies and Allied Matters Act provides for the functions of the Commission and they include the following:

- i. To administer the Act, including the regulation and supervision of the formation, incorporation, management and winding up of companies;
- ii. To establish and maintain company registries and offices in all the states of the federation suitably and adequately equipped to

discharge its functions under the Act or any law in respect of which it is charged with responsibility;

- iii. Arrange and conduct investigations into the affairs of any company where the interests of the shareholders and the public so demand;
- iv. To perform such other functions as may be specified by any Act or enactment;
- v. To undertake such other activities as are necessary or expedient for giving full effect to the provisions of the Act.

Furthermore, the commission also registers business names, incorporated trustees and provides a wide range of ancillary services. As an aside, it has been posited that these functions should not collude or affect the powers, duties or jurisdiction of the Securities and Exchange Commission under the Investment and Securities Act¹³. Equally, the commission has the power to carry out all the above mentioned functions and, in addition, it may apply to court for directions in respect of any matter concerning its duties, powers and functions under the Act and, on any such application, the court may give such directions and make such further order as it thinks fit¹⁴. The commission may also make enquiries on any person or company relating to compliance with the Act¹⁵.

It is worthy of note to state that the commission has offices in all the states of the federation¹⁶. As a result of commercial climate of some states, there arose the need to have more than one office e.g. Lagos State has three (3) offices situated at Yaba, Ikeja and Marina.

¹³ Cap 124 Laws of the Federation of Nigeria (LFN) 2004 now No. 29 2007.

¹⁴ Section 563(1) Companies and Allied Matters Act (CAMA) (Ibid).

¹⁵ Section 563(2) Companies and Allied Matters Act (CAMA) (Ibid).

¹⁶ Section 1(3) Companies and Allied Matters Act (CAMA) (Ibid).

The following are among the services offered at the state zonal offices with the aim of bringing the services of the commission closer to the people and they include:

- a. Business name registration;
- b. Processing of statutory filing under the Act and subsequent transfer to the headquarters for further necessary actions;
- c. Verification and assessment of application for company incorporation after which they are sent to the headquarters for final approval and registration;
- d. Sale of all statutory forms and publications of the commission;
- e. Responding to enquiries and complaints in respect of the services of the commission;
- f. Handling the preliminary process of accreditation of professionals like lawyers, chartered accountants and chartered secretaries.

In the same vein, the commission has in a bid to measuring up with international standard, been operating an online registration of companies since 2005, this is indeed commendable. This enables customers, both foreign and local to patronize the services of the commission from any location by means of an e-payment system which is smart card based. This provides the customers with a flexible and simple means of paying for the commission's services.

In order to debar touts from pervading the system, the commission gives accreditation to persons who genuinely seek information in the Registry either for themselves or as professionals on behalf of others. For the purpose of clarification, it is only legal practitioner, Chartered Accountants and Chartered Secretaries who are accredited with the commission to register a company under Part A of the Act. The requirements for accreditation for a legal practitioner are as follows:

- i. Obtain an accreditation form for free at the commission.

- ii. Fill and submit with the following documents:
 - a. 2 recent passport sized photographs;
 - b. Photocopy of NYSC discharge certificate;
 - c. Photocopy of call to bar certificate;
 - d. Copy of receipt of practicing fee for that year;
 - e. N2,500 for individuals and N5,000 for corporate organization.

It is upon the fulfillment of the above criteria that an accreditation I.D Card will be issued. For Part B and C of the Act, any person can register the company¹⁷.

In the course of discharging the forgoing primary duties the commission performs some other functions which include receiving and registering stipulated documents, orders and resolution delivered to it¹⁸; giving approvals, direction and extension of time¹⁹; registering of charges created by companies²⁰; keeping for each company a register of its charge(s) requiring registration²¹; calling or directing the calling of an annual general meeting where there has been default²²; determining the standard of a small company within the context of the Act for the purpose of preparing and delivering a modified and simpler financial statement²³;

¹⁷ MN. Umenweke. "Powers and Duties of the Corporate Affairs Commission as a Regulatory Body in Nigeria", *op.cit*, pp. 16 – 18.

¹⁸ See for example Section 102(2) Companies and Allied Matters Act (CAMA) (Ibid). requiring a notice of increase in share capital of a company to be filled and recorded by the commission.

¹⁹ See for example Sections 213(1)(b), 450(20), 467(10), Companies and Allied Matters Act +(CAMA) (Ibid).

²⁰ Section 197 Companies and Allied Matters Act (CAMA) (Ibid).

²¹ Section 198 Companies and Allied Matters Act (CAMA) (Ibid).

²² Section 213(2) Companies and Allied Matters Act (CAMA) (Ibid).

²³ Section 350 Companies and Allied Matters Act (CAMA) (Ibid).

applying to the court for an order directing a defaulting receiver or manager of a company to tender proper accounts of his receipt; demand the filing of returns or other documents²⁴; receiving a liquidator's account and causing it to be audited²⁵.

Aside from the foregoing, the commission also has the mandate to ensure the prevention of corporate irregularities, mismanagement, fraud and oppression of minorities. Its roles as a corporate ombudsman is most noteworthy and should be the most pervasive of its function in this regard²⁶.

Furthermore, the CAC has authorities to protect minorities shareholders. The Companies and Allied Matters Act no doubt has improved on the protection available for the minorities and public interests existing prior to its promulgation in the management of companies. To this end the combined effect of Sections 310 and 311 (2) (c) of the Companies and Allied Matters Act is that, the commission has the power to file a petition before the court on any of the following grounds:

- a. If it appears to it that the affairs of a company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against a member or members or in a manner which is in disregard of the public interest; or
- b. Any actual or proposed act or omission of the company (including an act or omission on its behalf) is in disregard of the public interest.

The foregoing empowers the commission to act proactively in defense of the minority.

²⁴ Section 399 Companies and Allied Matters Act (CAMA) (Ibid).

²⁵ Section 429 Companies and Allied Matters Act (CAMA) (Ibid).

²⁶ C O Okonkwo. "The Corporate Affairs Commission", op.cit, p. 18.

This provides a complementary or alternative means of protection for the minority where for example they are unable to pursue their rights in this regard. This could be due to the cost of litigation or some other reasons, which may include fear of victimization by the majority who often control the management in such situation. The commission by this provision is equally empowered to petition where a company's activities are being carried on in disregard of public interest. This power is given exclusively to the commission and not to any group of shareholders. Public interest in this context extends beyond investing members of the public who are interested in a particular company. It extends to activities which may be detrimental to the interests of the country. Thus activities contrary to public policy will constitute a ground for petition by the commission. Thus corporate activities leading to the production of obscene publications, smuggling, bunkering, oil-pipeline vandalisation will come within the purview of the provision.

Thus where the court has found that a petition by the commission is well grounded it may make such order or orders as it deemed fit in order to correct the situation for which the commission has petition. For instance the court may make an order for the compulsory winding up of the company concerned²⁷, it could also make an order regulating the company's affairs subsequently²⁸ or an order for the purchase of a member's shares by other members or by the company itself²⁹, and also it could make an order directing an investigation by the commission into the company's affairs³⁰.

²⁷ Section 312(a) Companies and Allied Matters Act (CAMA) (Ibid).

²⁸ Section 312(b) Companies and Allied Matters Act (CAMA) (Ibid).

²⁹ Section 312(c) and (d) Companies and Allied Matters Act (CAMA) (Ibid).

³⁰Section 312 (s) Companies and Allied Matters Act (CAMA) (Ibid); Abdul-Hamid Oba Yusuf. "Corporate Regulation in Nigeria: Investigatory Functions and Challenges of the Corporate Affairs Commission (CAC)", op.cit, pp. 18 – 20.

3.0 Powers of Corporate Affairs Commission (CAC) To Investigate the Affairs of Companies

One of the remedies available to a member wishing to check the excesses of the directors under the Companies and Allied Matters Act is to apply to the Corporate Affairs Commission (CAC) to investigate the company's affairs. Regrettably, this right has been very much overlooked or neglected by the members.

The CAC is empowered to appoint investigators to investigate the affairs of the company if an application supported by evidence showing good reasons is made by the company or members holding not less than one-quarter of the shares issued³¹.

Furthermore, the commission may appoint investigators to investigate the affairs of a company if a court by order declares that the affairs of the company ought to be so investigated³² on grounds, among others that:

- i. The company's affairs are being or have been conducted in a manner which is unfairly prejudicial to some part of its members;
- ii. Persons concerned with the company's formation or the management of its affairs have been guilty of fraud misfeasance or other misconduct towards the company or its members; or
- iii. The company's members have not been given all the information with respect to its affairs which they might reasonably expect³³.

It is the duty of all past, as well as present officers and agents³⁴ of the

³¹ Section 314(1) (3) Companies and Allied Matters Act (CAMA) (*Ibid*).

³² Section 315(1) Companies and Allied Matters Act (CAMA) (*Ibid*).

³³ Section 315(2) Companies and Allied Matters Act (CAMA) (*Ibid*).

³⁴ Agent" in relation to a company or other body corporate, includes its banker and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate. See Section 317(4) Companies and Allied Matters Act (CAMA) (*Ibid*).

company and the company's subsidiary or holding company and other affiliates³⁵ whose affairs are investigated to produce all books and documents in their custody or power and to give the inspector all assistance in connection with the investigation³⁶.

Based on the report of the investigators the commission or the Attorney General of the Federation may institute civil and criminal proceedings as appropriate against any person or body corporate found liable³⁷. If it is expedient in the public interest that the company should be wound up, the commission may present a petition to the court for it to be wound up on the just and equitable principle³⁸.

Without doubt, the provision of Section 314 – 330 of the Companies and Allied Matters Act³⁹ is a potent weapon available to members of the company which unfortunately is seldom used. While the real reason for this situation has not been verified, it may well be because it will prove most ineffective if put to use⁴⁰.

In the United Kingdom originally, the only power available to the secretary of state was the appointment of outside inspector as it is now the case in Nigeria. In practice, the Department of Trade and Industry (DTI) was reluctant to appoint outside inspector because the process did not guarantee secrecy which enabled the board of the affected company to take remedial action or destroy or fabricate evidence⁴¹.

³⁵ Section 316 Companies and Allied Matters Act (CAMA) (*Ibid*).

³⁶ Section 317(i) Companies and Allied Matters Act (CAMA) (*Ibid*). Failure to comply or corporate may amount to contempt of the court (Section 319(3) and (4) Companies and Allied Matters Act (CAMA) (*Ibid*)) and any answer given may be used in evidence against the person (Section 317(5) Companies and Allied Matters Act (CAMA) (*Ibid*)).

³⁷ Section 321(1) 322(1) (2) and (3) Companies and Allied Matters Act (CAMA) (*Ibid*).

³⁸ Section 323 Companies and Allied Matters Act (CAMA) (*Ibid*).

³⁹ L. Paul Davies. *Gower's Principle of Modern Company Law*, op.cit, p. 467.

⁴⁰ I. Wilson. "Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Banking Consolidation" (April – June 2006) Vol. 12 No 2 Nigerian Economic Summit Group (NESG) Economic Indicator, pp. 6 – 7.

⁴¹ L. Paul Davies. *Gower's Principle of Modern Company Law*, op.cit, p. 467.

This situation has been remedied by an amendment of the U.K Company Act⁴² which now gives the secretary of state power to direct any company to produce to an officer of his any books and documents prior to the formal appointment of inspectors which appointment will be made if the facts elicited show that a full investigation is needed. This enables an officer authorized by the secretary of state to arrive without warning at the company's office or wherever else the document is believed to be held and demand for the documents⁴³.

The U.K position is clearly an improvement on the provision of CAMA which requires an application to be made to the CAC and the CAC will in turn appoint an inspector who will then demand for the relevant documents from the company. This procedure is fraught with problems and does not guarantee secrecy and surprise which are necessary elements for the power of the CAC to be effective. An amendment of *Section 314 – 330 of the Companies and Allied Matters Act* is therefore imperative⁴⁴.

In *UBA v CAC & Ors*⁴⁵ the court held that CAC may appoint one or more competent inspectors to investigate the affairs of a company and to report on them in such a manner as it may direct. See also *Adesanoye & Ors v Asewole*⁴⁶.

⁴² Section 447 (2) – (3) of the U.K Company Act 1967, as amended by the 1989 Act (S. 63 (1) – (7)) following this development, the Department receives about 3,000 complaint a year and an average of 180 investigations were completed in each of the year 1997/98 to 2001/2002. See L. Paul Davies. *Gower's Principle of Modern Company Law*, op.cit, p. 468.

⁴³ Failure to comply is an offence punishable by a fine and criminal sanctions are imposed on any officer of the company who is privy to the falsification or destruction of a document relating to the company's affairs or who furnishes false information. See L. Paul Davies. *Gower's Principle of Modern Company Law*, op.cit, p. 469.

⁴⁴ I.Wilson. "Regulatory and Institutional Challenges of Corporate Governance in Nigeria Post Banking Consolidation", op.cit, pp. 7 – 8.

⁴⁵ (2016) LPER-40569 (CA)

⁴⁶ 47 (2006) 14 NWLR (pt. 100) 242

4.0 Corporate Affairs Commission: The Regulatory Challenges to Nigeria

One of the key corporate governance issues is ensuring that the management of a company performs their function in order to meet the legitimate expectations of the shareholders and even the stakeholders. Our discussion above shows that although the regulatory framework set down in Companies and Allied Matters Act may appear adequate on the surface, there are quite a number of hindrances to the realization of the objectives contained therein. Except for the standards recently set by Central Bank of Nigeria (CBN) on the qualification and the limitations of persons to be appointed directors in Banks, the Companies and Allied Matters Act does not set such necessary detailed requirements which will guarantee the appointment of competent and honest directors. Also the duties of directors need further elaboration⁴⁷. While it may be argued that issues involving a breach or a supposed breach of duty by the directors could be redressed by judicial activism, sadly that has not been the case due to the challenges faced by either the members in bringing such cases before the court or the Corporate Affairs Commission as a regulatory authority.

There are statutory provisions giving seemingly adequate powers to the CAC and even protection of minority where there are dominant groups in the company. These provisions have not been put to good use, neither have they made any contribution towards reducing the tide of corporate abuse.

In Nigeria the share structure indicates that there are dominant group in most companies i.e., the typology of Nigerian companies is the dominant one.

⁴⁷ Vincent Nmeielle and Senyinna Nwauche. "External-Internal Standards in Corporate Governance in Nigeria" <<http://papers.ssm.com>> Assessed on 18th of December 2010.

Therefore, there is the need for a different approach to stem the tide of corporate abuse.

However, the problem in corporate regulation in Nigeria appears to be the wide gap between the statutory standards and the application, implementation and operation of those statutory standards. But instead of an attempt to close this gap, what exist are ad hoc approaches to any particular sector of the economy as the occasion demands. For instance, when there were dominant shareholder and management abuse in the Banks, the Bank and other Financial Institutions Act (BOFIA) was enacted and a Tribunal was established under it, essentially to enforce the Act. The insurance industry also came under increased regulation with the enactment of the insurance Act and the establishment of an insurance commission, to regulate the sector in apparent response to a similar situation in that sector. Another pointer to the ad hoc response in lieu of the application of the existing legal framework is the recent injection of four hundred and twenty Billion Naira (N420bn) into five (5) banks in Nigeria. The Nigerian media is replete with criticisms of this action by government⁴⁸.

The reason for this could be explained on the ground that CAMA make general provisions which requires judicial activism in order to bring out the details and as stated above there are bottlenecks in the way of bringing such matters before the court. The operation of the Companies and Allied Matters Act in this regard is also highly dependent on the prompting of the affected person(s), whereas as a result of procedural difficulties or challenges such persons are unable to give that necessary push to the Corporate Affairs Commission. For instance, information to properly bring up such matters before the court are often not available to the affected parties.

⁴⁸ <www.newswatch.ngr.com,radionigeriaonline.com; www.news.dailytrust.com> Assessed on 30th July 2012.

With the exception of the banking industry no action has been taken against directors and auditors for breach of duties or abuse of office leading to a violation of the minority shareholder rights.

Even though it is a statutory requirement for companies to file annual returns which contains valuable information on the health of the company, this has not prevented or even identifies potential corporate failure or abuse. This apparently underscores the serious challenges facing the Corporate Affairs Commission.

Also the power of the Corporate Affairs Commission (CAC) to order company meeting is an incomplete one. In view of the position of the law that the Corporate Affairs Commission can only exercise its power to direct a company general meeting if there is an application from a member even if the commission is in possession of information to this effect, it can do nothing. This provision is not in the spirit of the code of corporate governance as it makes the commission a toothless bulldog⁴⁹.

Another challenge for the Corporate Affairs Commission is the power to receive report from foreign companies exempted from domestic incorporation. This power like on company meeting makes the Corporate Affairs Commission (CAC) a dummy, as the power to penalize erring foreign companies lies with the Federal Executive Council which lack the time and expertise to handle such matter on many occasions. Therefore, such companies escape the supervisory powers of the CAC

⁴⁹ OO. Oladele. "Responding to the problem of practical implementation of the Companies and Allied Matters Act 1990" (2000) Vol. 1 IFJR p. 2; See also A. Almustapha. "The problem of Practical Implementation of the Companies and Allied Matters Act, 1990 CAMA and the need for a Review" (2004) Nigeria Bar Association Annual Bar Delegates Conference, session on papers, p. 42. Almustapha is the Director General of the Corporate Affairs Commission of Nigeria. See Section 213(2) Companies and Allied Matters Act (CAMA) (*Ibid*).

even where they fail to comply with existing laws such as Environmental Protection Act, Standard Organization of Nigeria Act, Consumer Protection Council Act and similar legislation⁵⁰.

The Registrar-General of the Corporate Affairs Commission wields too much power as he is the only person who can append his signature on the certificate of incorporation. There is no regional autonomy as the attempt made at making registration of companies easier and faster has not been achieved as companies under Part A, B and C of the Act have to be incorporated at the headquarters in Abuja. To this end, it makes the whole process cumbersome and not fast considering the enormity of companies all over the federation that needs to be incorporated.

There is equally the challenge of lack of central database to ascertaining the veracity of information people produce at the point of registration of companies in the country⁵¹ as well as electricity problem, which makes the commission spend more money on fuelling generators. According to the Registrar-General of the commission, Mr. Ahmed Almustapha who stated that:

“Computerization of the companies' Registry needs constant power, that lack of clean power with fluctuations on our computer, server and other equipment will shut themselves up and when they start shutting themselves up frequently, there will be problem⁵².”

⁵⁰ Abdul-Hamid Oba Yusuf. “Corporate Regulation in Nigeria: Investigatory Functions and Challenges of the Corporate Affairs Commission (CAC)”, op.cit, pp. 26 – 28.

⁵¹ Vanguard Sunday 22nd October 2013.

⁵² <www.cacnigeria.org> Assessed on the 16th June, 2010.

Similarly, the online search is not fully functional as it is not frequently updated. In effect the following could be itemized as challenges of the commission.

- i. Power supply;
- ii. Inadequate ICT infrastructure;
- iii. Poor postal services;
- iv. Inadequate legal framework;
- v. Low literacy level;
- vi. Low computer literacy and internet awareness⁵³.

Some people in Nigeria register companies at the commission for the purpose of obtaining contracts as their companies exist only on paper. To this end, such companies do not have structures and audited annual report and as such do not file annual return. Also, the commission has issues with implementation of some of the provisions of the Act.

The statutory requirement for payment of annual taxes and return of evidence of such payment to the CAC is not only a mechanism to general revenue for government but a veritable means of ascertaining whether an incorporated company is in business or is moribund.

Dormant companies are not only a loss to government in terms of potential revenue but also a hindrance to the registration of new companies who share the same or similar corporate names. It is not uncommon for unscrupulous agents to incorporate companies in the names of world famous brands with the expectation that when such famous brands come to Nigeria, they could sell the incorporated names to the actual user of such names at a huge profit.

⁵³ See <www.cacnigeria.org, www.cacnigeria.net, www.cacnigeria.com> 16th June, 2010.

Recently, the Federal Inland Revenue Service (FIRS) of Nigeria declared that 949 companies are dormant. In a step towards achieving this objective, the FIRS and the Corporate Affairs Commission (CAC) are to de-list dormant companies from the Register of companies in Nigeria when the proposal takes effect, dormant companies would have two months within which to prove that they are still engaged in business under their registered names⁵⁴.

5.0 Conclusions and Policy Recommendations

All considered, it is common ground that the observance of good corporate governance by Nigeria Corporate Affairs Commission will make them efficient, effective, responsive and accountable corporations that contribute to the welfare of society by creating sustainable wealth, employment with integrity, probity and transparency.

The Corporate Affairs Commission is doing a great job. In contrast to the experience under the defunct Registrar of companies, the commission has improved and modernized the process of registration of Companies, Business Names and Incorporated Trustees. It is our humble view that there is still room for improvement particularly as it relates to the time frame for registration. In the case of Incorporated Trustees, the commission needs to be commended for its giant strides as a regulatory body in the industry.

Furthermore, until shareholders and indeed stakeholders are allowed to bring up such matters before the CAC or the court with the little information at their disposal, corporate abuse and judicial “in activism” will continue unabated.

⁵⁴ MN, Umenweke. “Powers and Duties of the Corporate Affairs Commission as a Regulatory Body in Nigeria”, op.cit, pp. 24 – 25. See Boniface Ahunwun “Corporate Affairs Commission to Deregister Tax – Defaulting Companies in Nigeria” <www.HG.org> Assessed 21st February 2009.

The CAC needs to be restructured, so as to be more proactive and independent in order to ensure the enforcement of the good provisions of the Companies and Allied Matters Act. But more importantly the CAMA is overdue for amendments in order to address the challenges which were never anticipated some two decades ago when it was enacted. That is the provision of *Section 314 – 330 of CAMA* should be amended in other to strengthen the capacity of CAC to enable it improve its power of investigation into the affairs of companies.