AN EXAMINATION OF THE POWERS AND FUNCTIONS OF THE CHAIRMAN OF THE FEDERAL INLAND REVENUE SERVICES IN RELATION TO THE PRINCIPLES OF CORPORATE GOVERNANCE IN NIGERIA

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Abstract

This paper examines how the enormous powers given to the Executive Chairman Federal Inlands Revenue Services under the Federal Inlands Revenue Services (Establishment) Act, 2007 negate the workability of the principles of Corporate Governance in the activities of the Service. In doing this, the paper appraises the jurisdictional bases as well as legal framework of Corporate Governance in Nigeria. The paper further examines how section 11 of the Act which has direct bearing on the qualification and function of the Executive Chairman negates corporate governance principle and the danger such may pose to the administration of the Service. The paper in the final analysis draw conclusion and make some practical recommendations that may aid the effective application of the principles of Corporate Governance in the Federal Inlands Revenue Services of Nigeria..

Key words: Powers, Executive Chairman, Federal Inland Revenue Services, Negation, Corporate Governance.

1.0 INTRODUCTION

Corporate governance is a central and dynamic aspect of corporate legal jurisprudence[1]. The term 'governance' is derived from Latin word '*gubernare*', meaning 'to steer', usually

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[1] Olokooba S.M and Ojibara H.B "An Overview of the Clogs in the Effective Corporate Governance in Nigeria" Confluence Journal of Jurisprudence and International Law, Vol. 6(2)2013, p.19

applying to the steering of a ship[2]. Corporate governance refers to the way that Boards oversee the running of a company by its managers, and how Board members are held accountable to the company and other stakeholders. Corporate governance has implications for the way a company treats not only its employers, customers, those financing the company and other stakeholders, but also the community in which the business operates. It therefore includes the relationship among the many stakeholders involved in a corporation and the goals by which the corporation is governed.

The issues of Corporate Governance was initiated by the Organisation for Economic Cooperation and Development (OECD) and it was endorsed by the OECD ministers in 1999 and have since become an international bench mark for policy makers, investors, corporations and other stakeholders worldwide[3]. However, due to lack of adequate legal framework, the issue of Corporate Governance in Nigeria especially in the hierarchical and functional structure of the FIRS is far from meeting the international standard as well as the basic jurisprudential bases for the application of the principle of corporate governance.

In Nigeria, the Federal Inland Revenue Services is the statutory body with the responsibility of collecting revenue due to the Federal Government, and at the head of this organization is the Executive Chairman. The Executive Chairman, according to the Act[4], is someone who among others is experienced in taxation, appointed by the President of Nigeria subject to the confirmation by the Senate. The Act further made the Chairman the Chief Executive and Accounting Officer of the Service. The same person according to the Act is responsible for the execution of the policy and the day to day administration of the affairs of the Service. A clear and careful analysis of these powers shows that, the Federal Inland Revenue Services chairman is the Alpha and Omega in the organization. He is the one to generate revenue, keep the account and spend same on the running of the affairs of the service. The issue now is, will it be appropriate to give a single person the power to do and un-do, to keep account and check account? Will such powers not encourage fraud, more so

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[2] D.C John An Examination of the Legal Principles of Corporate Governance in Nigeria. Ahmadu Bello University Journal of Commercial Law. Vol. 5. No 1. 2012. p.201

[3] *ibid*

[4] Section 11 (a)(b)(c)(d). Federal Inland Revenue Services (Establishment)Act. 2007

since the principle of corporate governance is rooted in the principle of checks and balances; will the appointment and fussing of such powers in the Chairman Federal Inland Revenue Services not amounted to the negation of the principles of Corporate Governance in Nigeria?

Structured into five sections, an appraisal of the Federal Inland Revenue Services under the Act follows this section. In section three, the focus is on the Jurisprudential bases and the legal framework for corporate governance in Nigeria. In section four, the paper discusses how the fussing of too many powers on the Executive Chairman Federal Inland Revenue Services negates the principles of Corporate Governance. The paper ends in section five with conclusion and recommendations.

2.0 APPRAISING THE FEDERAL INLAND REVENUE SERVICES UNDER THE ACT

The Federal Inland Revenue Services (Establishment) Act, 2007, established the FIRS as a body corporate with perpetual succession, a common seal and the power to sue and be sued. In addition, it created the Federal Inland Revenue Services Board. This board has overall supervision of the Service, as specified under the Act and consists of an Executive Chairman and Fourteen other members drawn from different government parastatals and establishments.[5]

[5] FIRS (Establishment) Act, 2007. S. 3 (2)(a-j) where it states that the Board shall consist of:
(a) the Executive Chairman...
(b) six members with relevant qualifications and expertise, appointed by the President to represent each of the geo-political zones
(c) a representative of the Attorney-General of the Federation
(d) the Governor of the Central Bank of Nigeria or his representative
(e) a representative of the Minister of Finance not below the rank of Director
(f) the Chairman of the Revenue Mobilization, Allocation and Fiscal Commission or his representative who shall be any of the Commissioners representing the 36 states of the Federation
(g) the group Managing Director of the Nigerian National Petroleum Corporation or His representative who shall not be below the rank of a Group Executive Director of the Corporation or its equivalent
(h) the Comptroller-General of the Nigeria Custom Service or His representative not below the rank of a Director and
(i) The Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director.
(j) The Chief Executive Officer of the National Planning Commission or his representative, not below the rank of a Director.

It is noteworthy that all the members of the Board, other than the Executive Chairman, are all part time members. [6] Also, the Chairman and other members of the Board, other than ex-officio members,[7] hold office for a term of four years renewable once only, [8] on such terms and conditions as may be specified in the Letter of Appointment.

A member of the Board may cease to hold office if, he resigned his appointment as a member of the Board by notice, under his hand, addressed to the President, if he becomes of unsound mind, if he becomes bankrupt or makes a compromise with his creditors, if he is convicted of a felony or any offence involving dishonesty or corruption and if he becomes incapable of carrying on the functions of his office either arising from an infirmity of mind or body.

Any member of the Board may also cease to hold office if, the President is satisfied that it is not in the interest of the Service or in the interest of the public for the person to continue in office. Also, the President can remove a member from office, if he has been guilty of contravening the Code of Conduct Bureau and Tribunal Act, or guilty of gross misconduct in relation to his duties. In the case of a person possessing a professional qualification, if he is disqualified by a competent authority or in the case of a person who becomes a member by virtue of the office he occupies, if he ceases to hold such office. [9]

3.0 JURISPRUDENTIAL BASES AND THE LEGAL FRAMEWORK OF CORPORATE GOVERNANCE IN NIGERIA

Effective corporate governance is either established through a well developed legal framework and an active capital market or through concentrated ownership. The systematic enforcement of law and regulation has helped create a culture of compliance that has shaped business culture and the management ethos of firms, spurning them to improve as a means of attracting human and financial resources on the best possible terms[10]. In short, corporate

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7 Federal Inland Revenue Services Establishment Act, 2007; Section 3(3)
8 Ibid; section 4(a)
9 Ibid, section 4 (b)
10 FIRS EA, 2007 part 1. S.5 (a-i)
D.C John An Examination of the Legal Principles of Corporate Governance in Nigeria, Ahmadu Bello University Journal of Commercial Law, Vol. 5, No 1, 2012, p.201

governance involves the function of direction rather than control.[11] The adherence to the jurisprudential bases of what corporate governance entail is afore of any managerial strategy of ensuring fairness and transparency in any corporate organizations.

3.1 *Jurisprudential Bases of Corporate Governance*

One of the foremost and influential codes of corporate governance; the UK Cadbury Report defines it as '...the system by which companies are directed and controlled...'[12] .This definition is mainly an effort to align a balance between economic and social goals and as best as possible the interest of individuals, corporations and the society.[13]

The Financial Times defines it as the management of a company 'in terms of the institutional systems and protocols meant to ensure accountability and sound ethics. The concept of corporate governance encompasses a variety of issues including disclosure of information to shareholders and board members, remuneration of senior executives, potential conflicts of interest among managers and directors, supervisory structures etc.'[14] Corporate governance can also be described as the set of processes, customs, policies, laws and institutions affecting the way a Corporation (or Company) is directed, administered or controlled.

The major jurisprudential bases why corporate governance is being advocated in the management of Corporations and Parastatals is to ensure the accountability of certain individuals in an organization through mechanisms that try to reduce or eliminate the principal – agent problem. The Principle of Corporate Governance call on the Boards truly be accountable and to take responsibility for their firm's adherence to a high standard of corporate behavior and ethics. It also requires regular disclosure about company performance, through periodic financial reporting. Adhering to the principle of good

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[11] Ibid.

[12] Report of the Committee on the Financial Aspects of Corporate Governance, referred hereafter as 'Cadbury Report' 1992, para 2.5, see also Olokooba and Ojibara, *op.cit*, p20

[13] Sir Adrian Cadbury, Corporate Governance overview, 1999 World Bank Report, cited in the Institute of Directors in Southern Africa, "Executive Summary of the King (King Committee on Corporate Governance) Report 2002, 6 available at www.iodsa.co.za assessed on 7 July, 2013

[14] Financial Times Lexicon, http://lexicon.ft.com/term?term=corporate-governance assessed 23 July, 2013, see also Olokooba and Ojibara, *op.cit*, p20

corporate governance has many direct economic benefits. It not only builds a culture of trust and collaboration, but also employees, who work where, their rights and needs are respected, tend to be more productive, and deliver higher quality work than those who are routinely mistreated and maltreated.

High standard of integrity, transparency and disclosure can be influential in restoring public trust. Suffice to say therefore that Good Corporate Governance is the glue that holds together responsible business practices, which ensures positive workplace management, marketplace responsibility, environmental stewardship, community engagement and sustained financial performance. [15]

3.2 *The Legal Framework*

The principal statute for Corporate Governance in Nigeria is the Companies & Allied Matters Act (CAMA).[16] The CAMA is a replica for most provisions of the UK Companies Act 1985 with revised provisions incorporated into it.[17] This Act established the Corporate Affairs Commission (CAC)[18] which is saddled with the responsibility of regulating and supervising the formation, management and winding up of companies and other institutions created in accordance with the CAMA[19] thereby safeguarding the interests of the public and the helpless minorities in the company[20].

However, it is pertinent to note that there are other codes or regulations in force to regulate code and practices of corporate governance in Nigeria. Amongst such codes are: the Code of Best Practices on Corporate Governance in Nigeria 2003 which was issued by the

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[15] Buchs, T Head Private Sector Development Division of Switzerland's State Secretariat for Economic Affairs (CSECO) <www.unglobelcompact.org.2009.> accessed on 28th January, 2011

[16] Hereinafter referred to as 'CAMA', (Cap C20, Laws of the Federation of Nigeria 2004). This Act was originally known as the Companies Act 1968 and it was modeled after the United Kingdom Companies Act of 1948. The Act basically contains the provisions and regulations for the running of companies in relation to the roles of directors and its members.

[17] For example: S. 359(6) CAMA predates the objectives & functions of the audit committee as stated in the Combined Code 1992 (UK)

[18] S. 1 CAMA, 2004

[19] S. 7 ibid

[20] Olokooba S.M and Ojibara, op.cit . p22

Securities & Exchange Commission (SEC);[21] the Code of Corporate Governance for Banks in Nigeria Post Consolidation 2006 which was issued by the Central Bank of Nigeria (CBN);[22] also, the Code of Corporate Governance for Licensed Pensions Operators 2008,[23] issued by the Pension Commission; and then the Code of Corporate Governance of Insurance Industry in Nigeria 2009[24] issued by the National Insurance Commission (NIC)[25].

To regulate the proper functionality of Companies and Industries in the Stock market, the Securities & Exchange Commission (SEC) and the Corporate Affairs Commission (CAC) serves as the two major institutions regulating such affairs in Nigeria.

4.0 POWERS OF THE EXECUTIVE CHAIRMAN OF THE FEDERAL INLAND REVENUE SERVICES AS A NEGATION OF THE PRINCIPLE OF CORPORATE GOVERNANCE

The powers and qualification of the Executive Chairman Federal Inland Revenue Services is contained in Section 11[26]. In the words of the Act,

> The Executive Chairman shall-
>
> (a)be appointed by the president subject to the confirmation of the senate
>
> (b)be the chief executive and accounting officer of the service
>
> (c)be responsible for the execution of the policy and the day-to-day administration of the affairs of the service; and
>
> (d)have cognate experience and skills in accountancy, economics, taxation, law and related fields.

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[21] Hereinafter referred to as the 'SEC Code 2003'
[22] Hereinafter referred to as the 'CBN Code 2006'
[23] PENCOM Code 2008
[24] NAICOM Code 2009
[25] Olokooba and Ojibara. op cit. p22
[26] (a)(b)(c) and (d) Federal Inland Revenue Services (Establishment)Act, 2007

A glimpse of the above provision shows that the chairman is having absolute power and control as far as the running of the Federal Inland Revenue Services is concerned. However, going by the definition and principles of corporate governance which is rooted more in check and balances between the Board and Management, one can query the rationale behind the appointment of the Chairman/Chief Executive Officer of the Federal Inland Revenue Services as also the Chairman of the Management Board as well as chief accounting officer. How will such a Board function effectively and or act fairly in its function of overseeing the running of the Service? Since the key features that makes corporate governance to be effective-checks and balances is naturally absent in such structure? The appointment of the Executive Chairman of the Service as the Chairman of the Management Board contravenes the principle that says that in corporate governance, balance of power is required.

Furthermore, the Executive Chairman ought not to be the Treasurer. However, it is interesting to note that under the Act[27], the chairman is also the Chief Accounting Officer of the Service. This is clearly in conflict with the doctrine of corporate governance, which stipulates that the Board of State Owned Enterprises (SOE) should be composed in such a way that they can exercise objective and independent judgment[28]performs any distinct function?

How will the Chairman/Chief Executive Officer who also doubles as the Chairman of Management Board and the Chief Accounting Officer, not use his corporate position to gain personal advantages? This is tempting and the chance of misuse of power is higher in this regard. How can the Board Chairman Act fairly in a situation where he is also the Executive Chairman? Can he ever criticize any decision that management makes and vice versa? The answer is obviously in the negative.

Furthermore, considering the fact that the practice of Corporate Governance in Nigeria requires a regular disclosure of company financial performance, standings and frequent audit

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[27] Federal Inland Revenue Services (Establishment) Act, 2007. Section 11(b)

[28] <www.oecd.org/corporate> accessed on 28th January, 2011

of records, given a single individual power to preside over both audited and un audited report which he himself is involved may not be objective in nature.

Apart from other requirements expected from the Federal Inland Revenue Services annually such as the preparation of an estimate of its income and expenditure for the succeeding year for the purpose of appropriation by the National Assembly[29], submitting to the Minister, a report of its activities during the immediately preceding year and shall include in such report the audited accounts of the service[30] not later than 30th September in each year, the Federal Inland Revenue Services (Establishment) Act, 2007 in section 18 further provides:

> the Service shall keep proper accounts and records and such account shall not later than six months after the end of each year, be audited by auditors appointed by the Board from the list and in accordance with the guidelines supplied by the Auditor-General of the Federation[31]

The above provision connotes that the intention of the Act is that there should be transparency and accountability in its activities. However, the question is, has this 'good' intention not been defeated by the singular fact that the Chief Executive Officer is also the one chairing the Board? As pointed out earlier on, under the principle of corporate governance, the Board of Directors is supposed to check the power of the Chief Executive. The norm is that it is the Board's responsibility to endorse the organization strategy, develop directional policy, appoint, supervise and remunerate senior Executives and ensure accountability of the organization to the authorities, but as it is now, the practice in the Federal Inland Revenue Services is an aberration and a clear negation of the workability as well as the practicability of the principles of Corporate Governance.

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[29] As stated in Section 17 Federal Inland Revenue Services (Establishment) Act, 2007
[30] See section 19 Federal Inland Revenue Services (Establishment) Act, 2007
[31] Federal Inland Revenue Services (Establishment) Act, 2007, section 18.

5.0 CONCLUSION AND RECOMMENATIONS

Flowing from all aforesaid, it could be gleaned that, the need for corporate governance in the corporate existence of any country cannot be over emphasized and its absence can affect the corporate existence of any functional organizations in such countries negatively. Based on this, it is the argument of this paper that fussing of too much power in the hand of the Executive Chairman of Federal Inland Revenue Services in Nigeria without any adequate checks and balances machineries put in place is purely a negation of the principles of Corporate Governance. The aftermaths as well as the long time effects of same are creation of chances and openings for abuse of power, corruption as well as fraudulent practices in the service. To check these shortcomings, the following are recommended:

- **Reduction in the Powers/Functions of the Executive Chairman of Federal Inland Revenue Services**

Reduction in the powers of the Executive Chairman Federal Inland Revenue Services will bring about the much needed checks and balances in the activities of the Services. Once there are clear machineries for check and balances in the organization, the good intention of the Act as stated in section 18 which borders on accountability and transparency will be achieved. For this, the paper recommends that the post of Board Chairman should be severe from the post Executive Chairman in the service. The executive chairman's power should be limited to the control of just the day-to-day management activities of the service. Not only that, the executive chairman's power should be subjected to the control of the Board of Directors.

- **Amendment of Section 11(b) Federal Inland Revenue Services (Establishment) Act, 2007.**

Section 11(b) of the Federal Inland Revenue Services Act made the Chairman to also be the Chief Accounting Officer of the Service. This provision is clearly in conflict with the principle of corporate governance, which stipulates that the Board of State Owned Enterprises (SOE) should be composed in such a way that they can exercise objective and independent judgment. To check such power, section 11(b) of the Act should be amended in such a way

that the Executive Chairman would not double as Treasurer or chief accounting officer of the Service.

- **A need for adequate Legal Framework and general overhauling of the Nigerian law which have direct bearing on Corporate Governance.**

Due to lack of adequate legal framework, the issue of Corporate Governance in Nigeria especially in the hierarchical and functional structure of the Federal Inland Revenue Services is far from meeting the international standard as well as the basic jurisprudential bases for the application of the principle of corporate governance in an established corporation. On this, it is the recommendation of this paper that all the Nigerian laws that has to do with corporate governance be reviewed to meet the international corporate governance standard, codes and rules.