

The Board

as the Brain of an Organisation



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1. Introduction

The brain is undoubtedly one of the most important parts of the human body; It is the central organ in the human nervous system responsible for controlling most of the activities of the body. It processes, coordinates, and integrates the information it receives from the sense organs and makes decisions as to the instructions sent to the rest of the body. Like the brain, the Board is accountable and responsible for the organisation's overall performance and affairs, and this responsibility is enshrined in various codes of corporate governance.

Like the brain in the human body, the board of Directors is the primary governing body of a company, tasked with controlling the affairs of a company. The *Companies and Allied Matters Act 2020*¹ defines a director as someone the Company duly appoints to direct and manage the Company's business. From a broader perspective, the Board is responsible for ensuring the Company's objectives are achieved. Given the critical role the board plays in an organisation, it is essential that it is properly constituted, with each member clearly understanding their roles and responsibilities. Furthermore, to enable the board to focus effectively on strategic matters, it is equally important to establish well-structured committees. The board will delegate to these committees', specific issues for in-depth consideration and the committees will in turn provide the board with recommendations for informed decision-making.²

This is the first of a three-part series titled 'Mind the Board', which explores the board as the principal body for effective corporate governance. In this edition, we focus on the composition of the board and the fundamental roles and functions it performs. Subsequent parts will examine the essential positions on the board and delve into the structure and responsibilities of board committees.

2. Size and Composition of the Board

Size

There is no specific worldwide accepted size of the Board; However, it is important to note that the size of a board impacts its effectiveness. Board size has been a corporate governance issue in almost all jurisdictions for a long time. The prevalent argument is that larger organisations should have large boards to allow

1 The Companies and Allied Matters Act 2020

2 Bisi Adeyemi (2022), "Nigerian Code of Corporate Governance 2018 (Principle 11): Board Committees" <https://businessday.ng/columnist/article/nigerian-code-of-corporate-governance-2018-principle-11-board-committees/>

for diverse skills and experiences; such boards could be more diverse, contentious, and fragmented than smaller boards. Furthermore, it is believed that a large board could be unwieldy. Therefore, ensuring that a board is of an appropriate size can help improve its performance by eliminating coherence and coordination issues, which may outweigh the advantages gained by having people of diverse backgrounds.³

Under the Companies and Allied Matters Act (CAMA)⁴, it is stipulated that every company, except for small companies, must have a minimum of two directors⁵ and in the event that a company has fewer than two directors at any given time, it is required to appoint new directors within one month.⁶ Failure to do so results in the company being prohibited from continuing its business operations. Moreover, if the number of directors remains below two for a period exceeding 60 days, the directors or members of the company become personally liable for any debts or liabilities incurred during that period.⁷ Notably, this provision does not apply to small companies which are permitted to operate with fewer than two directors.

The Nigerian Code of Corporate Governance (The Code/ NCCG) 2018, on the other hand, states that for the Board and its Committees to discharge their responsibilities effectively, there must be an appropriate balance of skills and diversity (including experience and gender) without compromising competence, independence and integrity.⁸ The Code did not, however, define what amounts to a sufficient size. This is reasonable because organisations vary in size and engage in different kinds of businesses. The number of individuals necessary to manage one organisation may not be the same for another due to differences in size and business.

In determining the appropriate size of a board, the United Kingdom Combined Code, 2008, specifically provides that

“the Board should not be as large as to be unwieldy. The Board should be of sufficient size that the balance of skills and experience is appropriate for the requirements of business and that changes to the Board's composition can be managed without undue disruption.”⁹

The reality, however, is that there is no regulation determining the exact size i.e., the number of directors—on the board of an organization, as this depends on several factors including the nature, size, complexity, and strategic needs of the

3 Siriwardhane, P. (2003), 'Broadening the Boardroom: Corporate Governance and Company performance in Sri Lanka', <https://pavithra.siriwardhane@rmit.edu.au>.

4 Ibid

5 Section 271 (1) Companies and Allied Matters Act, 2020

6 Section 271 (2), ibid

7 Section 271 (3), ibid

8 Principle 2, “Nigerian Code of Corporate Governance 2018”

9 Supporting principle to Main Principles A.3 Combined Code, 2008, United Kingdom

organization. Each company must determine a board size that ensures effective oversight, diverse perspectives, and efficient decision-making, without becoming unwieldy or diluted in accountability.

Composition

For a board to be appropriate and effective, there should be a suitable mix of Executive, Non-Executive and Independent Non-Executive members, ensuring that the majority of the Board should be Non-Executive Directors.¹⁰

The NCCG provides that the role of Executive Directors on the Board is to support the Managing Director/ Chief Executive Officer in the operations and management of an organisation. As such, they are expected to have a broad understanding of the organisation's business and possess additional qualifications necessary for their specific assignments or responsibilities. Non-Executive directors, on the other hand, bring to bear their knowledge, expertise, and independent judgment on issues of strategy and performance on the Board.¹¹ Hence, they should be selected based on their wide experience, knowledge, and personal qualities. Independent Non- Executive Directors bring a high degree of objectivity to the Board for sustaining stakeholder trust and confidence.¹² They serve as a strong independent voice on the Board; thus, they must be independent in character and judgment and should be free from any relationships or circumstances with the organisation, its management, or substantial shareholders as may, or appear to, impair their ability to make an independent judgment.¹³

Another perspective is provided in the Companies and Allied Matters Act 2020, which states in section 275 (1) that "*a public company shall have at least three independent directors.*" This implies that the composition of the Board, consisting of executive, non-executive, and independent directors, must include no fewer than six directors. As mentioned earlier, there must be two executive directors, at least one non-executive director, and the statutory three independent directors, making a total of six directors.

The Companies and Allied Matters Act, as well as the Nigerian Code of Corporate Governance mandates that the Board should also have a Board Chairman who is distinct from the Managing Director/Chief Executive Officer.¹⁴ These positions are significant for entrenching good corporate governance and effective board

10 Supra

11 Principle 6, "Nigerian Code of Corporate Governance 2018"

12 Principle 7, "Nigerian Code of Corporate Governance 2018"

13 Supra

14 Principles 3 and 4, Nigerian Code of Corporate Governance 2018

performance. To avoid the risk that one individual might dominate decision-making by the Board, these positions are to be separated and held by different individuals. CAMA 2020 explicitly provides that *"the chairman of a public company shall not act as the chief executive officer of such company"*. Furthermore, the Code provides that the positions of the Chairman of the Board and the Managing Director/Chief Executive Officer (MD/CEO) of the Company should be separate, ensuring that no person can combine the two positions.¹⁵ This separation aims to prevent autonomy or concentration of power on an individual.

The NCCG further enunciates the roles of the Chairman and the CEO. It states that *"the Chairman is responsible for providing overall leadership of the Company and the Board and eliciting the constructive participation of all Directors to facilitate effective direction of the Board"*,¹⁶ while the MD/ CEO is the head of management delegated by the Board to run the affairs of the company to achieve its strategic objectives for sustainable corporate performance.¹⁷

3. The Roles and Responsibilities of the Board

The Board is primarily responsible for the organisation's performance and affairs, as enshrined in various corporate governance codes across the globe. The role of the Board is to define the organisation's strategic goals, ensure that the resources of the organisation (human and financial) are deployed to achieve these goals, and oversee management's effective performance to enhance shareholder value and meet the organisation's obligations to other stakeholders and employees. The NCCG states,

"A successful Company is headed by an effective Board which is responsible for providing entrepreneurial and strategic leadership as well as promoting an ethical culture and responsible corporate citizenship. As a link between stakeholders and the company, the Board is to exercise oversight and control to ensure that management acts in the best interest of the shareholders and other stakeholders while sustaining the prosperity of the Company."¹⁸

15 Principle 2.7 "Nigerian Code of Corporate Governance 2018", Section 265 (6) Companies and Allied Matters Act 2020

16 Principle 3, "Nigerian Code of Corporate Governance 2018

17 Principle 4, "Nigerian Code of Corporate Governance 2018

18 Principle 1, Nigeria Code of Corporate Governance, 2018

The role and responsibilities of the Board shall be discussed in detail:

The role of the Board

Policymaking: Policies define the focus and differentiate responsibilities among the Board, management, and staff. Boards have a role in thoughtfully deliberating issues and policy proposals. They must be alert to the need for new or changed policy and periodically evaluate the policies they establish. To ensure a more effectively functioning Board, policies must be well-written. Boards should develop policies that cover various issues and leave their implementation to management. It is also important that board-level policies be reviewed regularly.

Decision-making: The Board is legally responsible for setting the organisation's strategic direction and ensuring its long-term performance in nearly all governance environments. This involves making choices about the organisation's vision, mission, and strategies. Boards make decisions about significant and strategic issues; thus, the Board should not fully depend on Management's positions without seeking additional information. The quality of the decisions that boards make is largely a measure of their effectiveness.

Oversight: The Board of Directors has a role in overseeing the organisation's business. Hence, management of an organisation is not the Board's responsibility. In its oversight role, the Board is legally responsible for everything that occurs within the organisation. In the area of quality, for example, the Board's oversight role may include setting the tone by stating that the organisation is committed to quality; establishing policies related to quality, such as credentialing; ensuring that mechanisms are in place, such as committees, to create a plan for quality; and monitoring implementation of the plan.

The responsibilities of the Board

The Code recommends that the responsibilities of the Board be enshrined in its charter and should include, but not be limited to, the duties listed below.¹⁹

- The Board is tasked with exercising leadership, enterprise, integrity and judgment in its oversight and control of the organisation to achieve its continued survival and prosperity.

19 Supra

- The Board of directors should ensure that the Board and its committees always act in the best interest of the organisation and within the bounds of the laws of the Federal Republic of Nigeria and other applicable regulations;
 - The Board also has the responsibility of considering and approving the long-term and short-term strategies for the business of the organisation and monitoring their implementation by management;
 - The Board is to identify and manage the relationship with shareholders and other stakeholders. Furthermore, the establishment and implementation of a succession plan, appointment process, training mechanism, and remuneration structure for both the Board and senior management of the organisation is the responsibility of the Board;
 - The Board is held accountable for the establishment and maintenance the organisation's values and standards (including an ethical culture) as well as models these values and standards;
 - Another responsibility of the Board is to oversee the internal audit function, approve the internal audit plan, and appoint and remove the head of the internal audit function on the recommendation of the committee responsible for audit;
 - The Board establishes the organisation's risk management framework, monitors its effectiveness, sets the organisation's risk appetite, receives and reviews risk reports and provides oversight over Information Technology governance;
 - They define a formal schedule of matters specifically reserved for Board decisions and issues delegated to Board committees and management;
 - They oversee the effectiveness and adequacy of the internal control system as well as the organisation's communication and information dissemination policy;
 - The Board performs the appraisal of Board members and executive management while ensuring the integrity of reports, accounts, and all material information provided to regulators and other stakeholders;
 - Finally, the Board ensures that management systems are in place to identify and manage environmental and social risks and their impact.
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The Board can delegate matters to well-structured committees without abdication. Hence, the board committees play an important role in the governance process of an organisation. It is useful to periodically review the committee's structure and functions and ensure everyone knows what is expected of them. The Code of Corporate Governance has provisions for the Nomination and Governance Committee, the Remuneration Committee, the Audit Committee, and the Risk Management Committee.²⁰ These committees must have members with the requisite skill and competence to be effective.

In a nutshell, the Board's role involves coordinating the organisation, integrating information from stakeholders, clients, and society, and making decisions and issuing instructions to enhance the organisation's success. Therefore, an organisation should have a clearly defined, rigorous, formal, and transparent procedure that guides the selection of directors to ensure the appointment of high-quality individuals to the Board.²¹

From a combined understanding of the brain's function in the human body and the Board's role in an organisation, it is agreeable that the Board drives and is vital in the proper functioning and sustainability of an organisation, just as the brain is to the human body.

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20 Nigeria Code of Corporate Governance, 2018

21 Ibid, n 25

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