



The role of independent directors in the corporate governance of Nigerian banks

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Abstract

The appointment of independent directors is/was considered as desiderata and as an epitome of good corporate governance. Their necessity in the board of bank is to ensure the prevention of corporate scandals such as those of Enron and Worldcom etc. In Nigeria, the importance of independent director has been underscored by codes even before the coming on board of the National Code (now suspended) despite the absence of statutory prescriptions to that effect. Though the codes have not been unanimous as to the number of independent directors that should be on the board, the critical issue has been whether they play any role at all in promoting good corporate governance in banks. It is contended that the fact that the independent directors are now being sought after by companies as well as by banks is a clear indication that they bring a lot of value to the banks as they are expected to serve as a check on the management of the banks by providing unbiased and independent views to the board of banks and represent minority shareholders' interests. It is argued that for the independent director to be able to discharge its responsibilities to the banks, the teething problems of the mode of appointment, industry experience, available time and tenure on the board must be tackled headlong.

Keywords: corporate governance, Nigerian banks

Introduction

An independent board of directors in public listed companies is seen as an integral element of a country's corporate governance norms. Board independence has taken a pivotal status in corporate governance that it has become almost indispensable^[1]. Consequently, governance reform in recent years has increasingly pinned hope as well as responsibility on independent directors to enable higher standards of governance.

Although the institution of independent directors has been the subject matter of debate lately, the concept itself is hardly of recent vintage. Independent directors were introduced voluntarily as a measure of good governance in the United States (U.S.) in the 1950s before they were mandated by law^[2]. Thereafter, owing to sustained efforts by the Delaware courts and stock exchanges in deferring to decisions of independent boards, independent directors took on greater prominence^[3]. Following the Enron cohort of scandals, independent directors were recognized by statute as well^[4]. A similar, but more recent, trend is ascertainable from the United Kingdom (U.K.) as well. The requirement for board independence there was triggered by the Cadbury Committee Report in 1992. With these developments, board independence became well entrenched in the U.S. and the U.K.

The turn of the century witnessed a proliferation of independent directors beyond the borders of the U.S. and the U.K. to several other countries around the world. This is due to the profound impact that corporate governance reforms (culminating with the Sarbanes-Oxley Act in the U.S. and the Cadbury Committee Report in the U.K.) have had on corporate governance norm-making around the world, particularly in relation to the appointment of independent directors as an essential matter of good governance. The Cadbury Committee Report has led the development of corporate governance norms

in various countries such as Canada, Hong Kong, South Africa, Australia, France, Japan, Malaysia, and India, just to name a few^[5]. Similarly, the U.S. requirement of independent directors has also resulted in readjustment of corporate governance norms in various countries^[6]. This was a reaction primarily to ensure the prevention of corporate governance scandals such as those involving Enron and WorldCom in their respective countries.

In Nigeria, the need for an independent director has been underscored by the codes despite the fact that there is no statutory prescription to that effect under our statute as obtainable in some other climes^[7]. The Central Bank of Nigeria (CBN) code of corporate governance for banks post consolidation, 2006, section 5.3.5 thereof stipulates that each bank should have a board of not more than 20 (twenty) directors. Section 5.3.6 provides that at least 2 (two) of these directors being non-executive, appointed on their merits, should also be independent. On a full board of twenty, this translates to (10%) ten percent of the directors on the board being independent. By section 2.2.1 of the CBN code of corporate governance for banks and discount houses 2014, this number was reviewed up to five independent directors on the board of banks and discount houses. The bankers committee on the other hand had earlier by section 2.2 of their 2003 code of corporate governance placed the minimum ratio of directors that should be independent, at 20%. This puts their number count at 4 (four) for a board of twenty^[8]. The National Code under section 5.6 provides that the number of non-executive directors on the board shall not be less than two-thirds of the board and the number of independent non-executive directors shall not be less than half of the number of non-executive directors. This would for example mean that in a board of say 20 directors the non-executive directors should not be less than 13 and half of that number for independent directors would be

6.5 approximately 7 independent directors. This is a little higher than what was recommended by the CBN code 2014. The difference in number of independent directors for a board notwithstanding the crucial issue is whether they play any role in promoting the governance of banks in Nigeria. If they do what are the likely challenges they may face which may hinder the discharge of their onerous duties to the bank as to render them ineffective.

Who is an independent director?

An independent director has to be a Non-Executive Director. However all Non-Executive Directors are not necessarily independent directors.

A major theme in corporate governance writing is the need for non-management directors on the board to serve as a check on management in the interests of shareholders. In other words, non-management directors are there to help shareholders solve the agency problem. If such directors are to monitor management effectively, they must be independent of management. From this contemplated role stems the typical definition of "independent director": one who has no need or inclination to stay in the good graces of management, and who will be able to speak out, inside and outside the boardroom, in the face of management's misdeeds in order to protect the interests of shareholders^[9].

The Securities and Exchange Board of India (SEBI) defined an independent director as a non-executive director who:

“apart from receiving director’s remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect independence of the director.”^[10].

According to CBN circular on guideline to banks on appointment of independent director “An Independent Bank Director, would be a member of the Board of Directors who has no direct material relationship with the bank or any of its officers, major shareholders, subsidiaries and affiliates; a relationship which may impair the director’s ability to make independent judgments or compromise the director’s objectivity in line with Corporate Governance best practices.”^[11]

It is evident from the definitions above that the concept of ‘independence’ is used in the context of independence from firstly, management and secondly, from a position of financial gain, including employees. It is further clear that independence is a state of mind. Given that human relationships are involved, one can only rely on the integrity of individuals who take on the role of directors to ensure that they maintain a clear separation and an independent mind when performing their duties as directors.

In general terms, an independent director is a director who is free from such relationships or circumstances with the company itself, members of management of the company, or controlling shareholders of the company, which may, or appear to, impair his ability to make independent judgment in his involvement in the management of the affairs of the company^[12]

The description given by the code highlights various criteria for the independence ‘litmus test’ which ought to be applied in the process of choosing an independent director; i.e.

shareholding test which denotes that a director having a substantial shareholding cannot be independent; the employment test states that a director who is an employee on the board that he sits cannot be deemed to be independent; familial relationship test posits that a director who has a family relationship with a director who does not satisfy the shareholding and employment test is not independent; material business relationship test refers to a director that has business dealing with the company and as such cannot be considered to be independent; professional, advisory or consultancy relationship test means that a director who renders professional, advisory or consultancy services to the board he sits cannot be considered to be independent; additional income test means that a director who get remunerated beyond the normal director sitting allowance is not qualified to be called an independent director; long tenure test would mean that a director who has stayed long on the board of a company cannot be called an independent director; affiliation test means that an independent director should not be affiliated to the company and its subsidiaries under which they serve and a general omnibus test covers any form of relationship between the independent director and the company not specifically mentioned as above. These may not be exhaustive but they constitute a good foundation to guide the process of appointment of independent director^[13].

For banks, there are some additional criteria that must be considered in appointing independent directors. According to the guideline the person must not be a borrower of funds from the bank, its officers and affiliates; must not be part of an institution, charitable or otherwise supported by the bank in any form; should not serve on the Board of a subsidiary of the bank; should not be a current or former employee who had served in the bank in the past and none of his immediate family members should be an employee or former staff of the bank at the top management level in the preceding 5 years; provide financial, legal or consulting services to the bank or its subsidiaries/affiliates or had done so in the past 5 years; should have sound knowledge of the regulation of listed companies, relevant laws and regulations guiding the industry; minimum academic qualification of first degree and not less than ten years relevant working experience with proven skills in their chosen field^[14]. Although the Central Bank of Nigeria (CBN) guideline is not a code, it will apply to the extent that it would enable banks comply with the provisions of the code which has no detailed provision covering the issue. Thus in the case of banks, these additional provisions must also be taken into cognizance in order for the appointment of an independent director to be deemed valid.

Still on the test for independence there is a criterion for independence included in both the UK and Sri Lanka Corporate Governance Codes for Independent Directors to comply. The Sri Lanka Corporate Governance Code states that if any of the criteria is not met then this fact must be specified in the Annual Report and a justification must be given as to why the board considers that despite this criteria not being met the Non- Executive Director is still deemed to be independent. The provisions of the UK Corporate Governance Code as stated in section B.1.1 are similar. It states that a justification is necessary if a director is to be considered independent despite the criteria for independence as laid down in the code providing to the contrary^[15].

It is interesting to note that the criteria required for independence tends to deal with who should not be an Independent Director. The positive factors which deal with who should be an Independent Director are missing in the National Code (now suspended) as well as major corporate governance codes. What seems to be important is that an Independent Director should not be under any obligation to the controlling shareholder/s or the executive management. Otherwise it may impair their judgement and this defeats the purpose of their appointment as Independent Directors^[16].

Can a director really be independent?

Independence is a matter of fact. It is not cast in stone. A director may be independent this year, but may not be so the next year. Again, a director may be independent during the consideration of a particular issue and not be independent during the consideration of another issue, even at the same board meeting^[17].

Thus, independence is a personal characteristic. A director may be meeting all the criteria for determining independence and still not act independently while another director who did not meet any of the criteria for determining independence may act independently.

Undoubtedly, therefore, independence is a personal quality. It is a state of mind. The criteria for assessing the independent status of independent directors are mere guides or conditions that could lead to a rebuttable presumption that a director who meets those requirements would likely be independent. This is especially so since the director is aware of his special status as an independent director and the necessity of his ensuring that he maintains that status throughout his stay on the board of directors of the company as an independent director^[18].

Why have independent directors on the board?

There are several distinct benefits that an independent board of directors can bring to a company, ranging from long-term survival to improved internal controls. Independent directors on the board can be beneficial in that it:

- a. Counterbalances management weaknesses in a company.
- b. Ensures legal and ethical behavior at the company, while strengthening accounting controls.
- c. Extends the “reach” of a company through contacts, expertise, and access to debt and equity capital.
- d. Is a source of well-conceived, binding, long-term decisions for a company?
- e. Helps a company survive, grow, and prosper over time through improved succession planning through membership in the nomination committee etc^[19].

Qualifications for appointment

There seems not to be a specific provision under the code for the qualification for appointment of independent director. As rightly observed by a learned writer there is a complete absence of positive factors that would qualify a person for being an independent director (except perhaps for the age of the person). For example, there is no mention of the types of qualification or experience the person should possess prior to appointment to the position so as to be able to discharge board responsibilities effectively. This is a serious deficiency in the definition of independence. It encourages companies to appoint persons who satisfy the formal requirements of independence, but who may

otherwise not be suited for the job^[20]. In the case of banks the CBN guideline requires that the independent director should not only comply with the criteria for appointment as independent director he must also meet the requirement contained in section 257 (1) of CAMA, 1990 (as amended), the Banks and Other Financial Institutions Act (BOFIA) of 1991, (as amended) or/and any other relevant law^[21]. This is commendable as it ensures that only the right person gets appointed as an independent director.

Mode of appointment

There are no specific provisions relating to the appointment of independent directors. Thus the provisions of the corporate statute relating to appointment of directors generally would apply. For the first directors, the law provides that they should be appointed by the subscribers to the memorandum of association of the company, a majority of them or they may be named in the articles of association of the proposed company^[22]. For subsequent appointments generally, it is the shareholders in a general meeting who are empowered by law to appoint directors by ordinary resolution^[23].

Expectedly the selection and recommendation of directors for appointment under the corporate governance environment ought to be the responsibilities of the nomination committee. Even if the nomination committee makes recommendations on the selection of members for the Board of Directors, the voting strength to appoint directors at a general meeting of the company clearly lies with the controlling shareholders. If an Independent Director acts against the wishes of the controlling shareholders the chances are that such director’s appointment will not be renewed even if he were to survive the embarrassment of not being removed prior to the end of his/her tenure.

As stated above under the company law directors are appointed by shareholders. However in practice what happens is that nominations for vacant director positions come from the larger shareholders who are represented in the Board of Directors. These appointments are ratified at meetings of shareholders. It seems strange that although Independent Directors are expected to protect minority interests the major shareholders in effect make their appointments^[24]. It is the major shareholders who control the voting power at general meetings at which Independent Directors are appointed. An Independent Director would obviously owe allegiance to the controlling shareholder who appointed him/her as a director. For this reason an Independent Director may not be in a position to oppose a decision of the controlling shareholders.

The absence of a specific procedure for nomination and appointment of independent directors makes it vulnerable to capture by the controlling shareholders. Assuming that one of the purposes of the independent directors is to protect the interest of the minority shareholders from the actions of the controlling shareholders, such a purpose can hardly be achieved given the current matrix of director appointment, renewal and removal. The absolute dominance of controlling shareholders in this process creates a level of allegiance that independent directors owe towards controlling shareholders^[25]. There are possible alternative approaches that can considerably dilute the influence of the controlling shareholders in the appointment of independent directors. The first approach is to have an independent nomination committee of directors that

will determine the persons who will be placed on the board as independent directors.

One other approach of addressing this problem is for the Independent Directors to be appointed by the minority shareholders to whom they would be accountable. The interest of Independent Directors must be aligned with those of minority shareholders if Independent Directors are to serve as surrogates for the minority shareholders ^[26].

In India, Spain and Italy minority shareholders may appoint a specified number of directors ^[27]. According to Spanish and Indian Law ^[28] there is a proportional voting system for election of directors. This is a method of voting whereby a shareholder has a multiple number of votes equivalent to the number of directors to be appointed multiplied by the number of shares held. The shareholder is not required to vote for a different candidate for each board seat. Instead a shareholder may give multiple votes to the same candidate if the shareholder so wishes. This will make it possible for minority shareholders to elect directors in proportion to their shareholdings. Vote capping is another device, which may be used to limit the power of controlling shareholders. This is whereby the voting is limited and not available for all shares held. Vote capping of large shareholders should be on resolutions of the company ^[29].

The equal treatment of all shareholders in the same class is a fundamental norm of corporate law. However in so far as shareholder preferences are not always the same and major shareholders have legitimate power to shape corporate policy by virtue of their voting power some level of unequal treatment among shareholders seems necessary ^[30]. According to Italian Law as reformed in 2005 ^[31] listed companies are required to permit minority shareholders to appoint one shareholder to the board. The Indian Companies Act has a similar provision ^[32].

One other remedy mooted in this regard is perhaps for appointments as Independent Directors to be made by an independent body such as the securities market regulator. However, the concern here is if political interference would not be used to get the securities market regulator to select persons as desired by the controlling shareholders. It is noteworthy to observe that in line with CBN guideline for appointment of independent directors by banks such appointments are required to be made by the banks subject to approval by the apex bank as part of its regulatory functions ^[33]. Another strategy suggested is for the minority shareholders to elect some or all of the Independent Directors. Indeed the minority shareholders may appoint one or more of them to serve on the board as Independent Director/s. A shareholder is not disqualified from serving as an Independent Director so long as the shareholding is not material or significant. In this vein a major shareholder would not qualify to be appointed as an Independent Director.

One other view is that the list of those put forward for election or re-election as independent directors be drawn up by nomination committee made up of only independent directors or a majority of independent directors. Those nominated for consideration should be from a list submitted to the committee by either a regulatory body or Institute of Directors from which those put up for election would be selected. At the annual general meeting where independent directors would be elected or re-elected, every shareholder would be allowed to take part in the voting process. The voting may be by poll if properly demanded in line with company law and practice.

The main advantage with this procedure is that the controlling shareholder would not have a hand in the nominating process. Also, he would not be denied his right as a shareholder since he is allowed to take part in the voting process. In addition, the director that emerges from the voting process would not be someone he directly and/or unduly influenced his election or re-election as the list that was considered by the nomination committee was submitted by a body independent of the controlling shareholder and the company itself. It has been submitted that the option is capable of dousing the present doubt about possibility of actually electing an independent director when the controlling shareholder can influence the appointment of such so-called independent director. This process is, therefore, recommended for further consideration towards eventual adoption in the election or re-election of independent directors ^[34].

Responsibilities/Role in bank governance

First and foremost, it must be understood that independent directors are members of the board of directors of the company concerned. To that extent, they owe the same duties and responsibilities to the company and its shareholders as any other director on the board of directors of the company. They only have additional onerous responsibilities to be truly independent ^[35]. The duties and responsibilities of directors are the duty of care, skill and diligence and the fiduciary duty. Suffice to say that the CBN guideline has itemized three additional responsibilities of independent directors of banks as follows:

1. They are to employ neutral, specialized/expert skills towards achieving a balance of knowledge, skills, judgment and other directional resources bearing in mind that neutrality of views and quality of debate are very crucial in enthroning good Corporate Governance practices;
2. They are to serve as a check on the management of banks by providing unbiased and independent views to Boards of banks and represent minority shareholder's interests;
3. They are to help the Boards of banks to get the most out of its businesses by providing objective inputs to strategic thinking and decision making, while ensuring full compliance with statutory rules and regulations ^[36]

Independent directors are therefore also seen as a check on the management of companies, as an oversight mechanism, apart from the value addition that they bring to board deliberations. This is to ensure that action for wrongdoing by the majority stakeholders, who control the management by holding a majority of their own shares, is not hampered. A director's fulfillment of fiduciary responsibilities requires more than the mere absence of bad faith or fraud. Representation of the financial interests of others imposes on a director an affirmative responsibility to protect those interests and to oversee with a critical eye ^[37].

The shareholders, especially the minority shareholders, look to independent directors providing transparency in respect of the disclosures in the working of the company as well as providing balance towards resolving conflict areas. In evaluating the board's or management decisions in respect of employees, creditors and other suppliers of major service providers, independent directors have a significant role in protecting the stakeholders interests. One of the mandatory requirements of audit committee (where independent director may hold sway)

is to look into the reasons for default in payments to deposit holders, debentures, non-payment of declared dividend and creditors. Further they are required to review the functioning of the “Whistle Blower mechanism” and related party transactions. These, essentially, safeguard the interests of the stakeholders^[38].

As members of Board, their role is similar to any other director; independent directors primarily provide inputs to all key-decisions, such as strategies, performance evaluation and risk evaluation, affecting the company. Significant contribution is expected when matters relating to the committee on which they are members are being discussed. They are to ensure that the Board addresses areas of concern on the running of the company and that these are recorded in the minutes if not resolved.

Perhaps the single most important role that independent directors play directly in relation to the board is the objective view that they bring in while evaluating the board and the management decisions, creating a balance in the interest of the shareholders. These areas are executive remuneration, succession planning, and changes in corporate control, takeovers and acquisitions and the audit function.

One other role is to ensure compliance with the company’s code of conduct. As members of the Board, Independent Director’s should, not only comply with the code of conduct but also establish, implement, monitor its adherence by other senior management and set an example for others^[39].

María Gutiérrez and Maribel Sáez^[40] have identified the functions of Independent Directors as advisory, monitoring and networking. According to them from a regulatory perspective it is the monitoring function, which is important. This is because when the executive directors are faced with a conflict of interest it is the Independent Directors who perform the function as monitoring agents and as independent decision makers. The other two functions namely advising and networking are not areas where a conflict could arise between the outsiders (controlling shareholders in the case of companies with concentrated share ownership or executive directors in the case of companies with dispersed share ownership) and insiders (shareholders or minority shareholders). Hence advising and networking need not be limited to Independent Directors. Even executive directors may even perform these functions.

Thus the main goal of independents is to improve corporate decision-making from the inside solving the managerial capture of the board. From this perspective, in companies with dispersed ownership structures, board independence functions as a substitute for external regulation in order to reduce the agency problems between managers and shareholders: it is cheap for the government, and it spares courts and legislators the trouble of getting too implicated in the internal affairs of the corporations. So, in a broad sense, independent directors are called to improve corporate functioning from the inside and without external legal guidelines^[41].

In María Gutiérrez and Maribel Sáez view in countries with concentrated ownership structure board independent directors can only work as a complement of external regulation in the task of reducing minority expropriation problems. Firstly, if there is clear mandate and definition of legal status. Secondly, if they are to control ex-ante third party transactions, a tandem of clear rules and open-ended standards of conduct against self-dealing should exist. Because anti-self-dealing regulation

is prior to its enforceability. Thirdly, they also need to be provided with the means and abilities to do the job^[42].

Challenges of independent directors on bank boards

The occurrence of bank crisis and the existence of independent directors on such bank boards have led many to question whether they are of any value. A lot of emphasis nowadays is put solely on the monitoring duties of independent directors, but this is not the only task an independent director should have. The key language spoken in boardrooms is one of gross margin, operational expenses, underlying growth, leverage ratio, enhanced control environment, amongst others. This focus and language obscure another primary task for independent directors, and that is to provide strategic direction to the company. If independent directors are to play a valuable role in setting, calibrating and changing the strategic direction of the company, including addressing key strategic weaknesses and risks, this requires that independent directors are more engaged in the content of the business of the bank. The monitoring role typically does not take independent directors to the heart of the business itself and does not allow them to contribute to the core issues that make a business successful or not^[43].

To come to a conclusion about their value, it is important to discuss several controversies related to this notion of independent directors. Controversies regarding independent directors on bank boards during financial crisis is mostly focused on qualifications related to their industry experience, available time, tenure (in relation to ‘true’ independence) and their proportion on the board. This will now be discussed in turns.

Industry Experience

One of the major criticisms levied at many bank boards is that they lack a significant contingent of independent directors with extensive and first-hand financial industry experience or that this experience was dominated by insiders or former insiders (i.e. former senior executives of banks)^[44]. Independent directors who lack a deep understanding of a firm’s operations may be another disadvantage in meeting their fiduciary duties. Such directors may become overly dependent upon the representations of management for the important information necessary to evaluate important strategic initiatives, risks and decisions. It can be difficult for the independent director with no or little industry experience to raise important issues, questions or concerns. Lacking the necessary knowledge they might find it awkward or embarrassing to explore issues that are complex or not easily understood. In these cases, a theoretically independent director can quickly become very dependent, thus compromising the board’s oversight function rather than enhancing it^[45]. On the other hand, independent directors with prior experience in the firm’s industry may be socially connected with or sympathetic to the firm’s management, thus impairing their monitoring incentives^[46].

Naturally, board members cannot be expected to know as much about the business as a member of management. However, if board members are to carry out their responsibility to challenge management, they must have the expertise necessary to grasp the complexity of the business and thus the associated risks. The question is however what constitutes as appropriate expertise. Some argue that the non-financial experts are the individuals that may ask the important high-level strategic

questions, while the more technical members are focused on the details^[47]. In this respect it is argued that every board needs a generalist to provide a broad perspective on the company's strategy, but the other members should be experts in the company's main line of business^[48]. But, when it comes to expertise, it is important to keep in mind if their expertise is current. Someone who worked for a bank 30 years ago might not know all the intricacies of complex financial instruments^[49].

Empirical evidence shows that independent directors with industry experience boost firm performance by improving major corporate decisions. Such independent directors have both the incentives and industry-specific knowledge to more effectively monitor and advise^[50]. But there are some studies that show the level of financial expertise among independent directors is positively related to risk taking before and during financial crisis^[51], and that the boards of failing banks had more independent directors with industry experience on the board compared to the boards of surviving banks^[52].

Independent Director Busyness

It is not unusual for independent directors to hold positions at more than one board. However, multiple directorships can, logically, severely limit the time independent directors spend doing their job on the bank board. And this time is very important, seen, as what can happen when certain risks are being overlooked or not enough time is spent to examine what is truly going on within a bank. Too little time can, once again, contribute to a future crisis because independent directors are too busy to actually monitor management and actively engage. Chancellor William Allen of the Delaware Court of Chancery explains this predicament very well by saying "effective monitoring requires a commitment of time and resources. The demands of the position, if properly understood, are inconsistent in my opinion, with service on an impressively long list of boards"^[53].

However, there are studies showing that multiple directorships can actually have a positive effect on the ability of an independent director to perform their job. It has been argued that sitting on multiple boards provides an incentive for diligent monitoring since the independent directors would have the knowledge, expertise and stronger incentive to actively engage and monitor the actions of management^[54]. In that respect, holding multiple directorships can help directors make the best decisions based on knowledge of the best board practices gained from other firms^[55]. Banks also hold that their firms benefit from the input of individuals that understand global business trends and can speak to some of the geopolitical issues these multinational firms face. The most desirable individuals are therefore by definition overcommitted, but crucial nevertheless^[56]. But, on the other hand, there is evidence that boards dominated by busy outside directors, i.e. directors holding three or more than three directorships, contribute to weaker corporate governance^[57]. Directors holding a larger number of outside board seats may be overcommitted. These directors may be stretched to the point where they are unable to effectively do their job^[58]. Similarly, the National Association of Corporate Directors guidelines (NACD) recommend corporate executives and Chief Executive Officers (CEOs) should not hold more than three outside directorships^[59]. Studies showing that serving on more boards can be valuable for the knowledge and expertise of an

independent director do make a fair point, however the number of boards a director serves on should not be unlimited. Independent directors are still 'just' human, and it is impossible to be fully committed to a bank board if someone has too many other commitments that need their attention

Tenure and true independence

It is difficult to measure whether an independent director is truly independent. A director's tenure on a firm's board is a factor that can influence a director's independence^[60]. During the financial crisis in the US it has been recognized that boards were less independent than they appeared. While many of the independent directors met the technical requirements for being considered independent, most had been in place for a long time^[61]. Research in the US indicated that the weighted average director tenure at the end of 2007 for financial institutions that disappeared was 11.2 years but 9.2 years for those that survived the first phase of the crisis^[62].

Research provides two alternative views on how tenure may affect directors' ability to perform their job. It can be argued that longer tenure increases an individual's commitment towards the firm and accumulates greater experience and knowledge about the firm and its business environment. From this point of view independent directors may be able to perform their monitoring responsibilities better. Some highly experienced board members believe their long-term ties with a company make them tougher monitors of management – partly because they understand its prior missteps better than newer directors do^[63]. But, an alternative view is that independent directors are less likely to discipline management when they develop friendship or social ties with management. In that respect, longer tenure develops a close social nexus and a strong affiliation between management and independent directors which can affect the monitoring function of an independent director because he/she is no longer objective^[64]. This particular view is recognized by several countries and institutions, however determining an 'appropriate' tenure limit is, very debatable. The NACD for example suggest a maximum 10 to 15 of years of board service in order to obtain fresh ideas and critical oversight which only new directors can bring to the board^[65]. India introduced the Companies Bill 2012 that deals with this 'problem' by proposing a tenure limit on independence to two terms of five years each^[66]. Furthermore, in the UK, the code sets a limit of 9 years if the director is considered to be independent while in the Netherlands and France a 12 year limit is set^[67]. However, it is very controversial to set a tenure limit, since anyone who has an independent mind will not compromise even as years pile on^[68].

Proportion of independent directors on bank boards

There is a 'conventional wisdom' surrounding the proportion of independent directors on bank boards stating that a mandatory increase in board independence would lead to better corporate governance, which in turn would lead to better corporate governance decisions and firm performance^[69]. It is now a preponderant view of regulatory authorities of business firms across corporate sovereignties that the 'virtue' of majority independent directors should guide appointments or selection of board's members. Consequently, there is a growing trend towards appointing majority or supermajority

independent boards ^[70]. A high standard of director independence is merited by the view that dispassionate, objective debate at the board level is integral to strong oversight of management ^[71]. To avoid or lessen the conflict of interest among stakeholders and fulfill the functions of monitoring and advising in an efficient manner, these directors should be a majority on the board ^[72]. Those who consider the board of directors an important element of corporate governance argue that boards dominated by independent directors are in a better position to monitor and control managers ^[73]. Furthermore, it is argued that corporate decision making will be improved if a majority of the board can be structured so that a particular motivation that of pleasing management is absent ^[74].

However, it is also argued that a relatively higher proportion of independent directors does not affect firm performance in either way. An optimum combination of executive and non-executive directors is seen as more adequate than excessively independent boards ^[75].

In sum in deciding whether an independent director is qualified based on a check-the-box system that states their (non) affiliation with the firm is, inadequate. Such a system does not take their true value into account. To determine whether independent directors are actually valuable on bank boards it is important to look at controversies that targets their qualifications, i.e. whether they have the experience, time and 'appropriate' tenure (in relation to true independence). Also the proportion of independent directors is very relevant in this discussion. All these qualifications contribute to determine whether an independent director can be seen as valuable or not.

Conclusion

The value of independent director on bank's board cannot be overemphasized. Whether they are considered as asset or liability to the bank is dependent on not only what they represent but also what they can actually offer to the board to enhance the overall rating of the bank in which they sit. To achieve this the independent director would need to arm itself with significant first hand knowledge of the banking industry as an independent director who lack a deep understanding of a firm's operations may be disadvantaged in discharging his obligations to the bank. The busyness of independent director can whittle down their value on the board of bank. Too little time spend on board of bank would mean that independent directors are too busy to actually monitor management and actively engage in effective management of the bank. There is need for a delicate balance on the tenure and independence of independent director on bank board. Whilst a long stay on the board of a bank may be beneficial it is not without its challenges so also is the other side of the coin. A fair mix of independent director on the board of the bank would ensure objective and dispassionate debate at the board level and enhance their oversight function of monitoring management. Therefore, the CBN Code of corporate governance recommendation of two independent directors on the board of banks stands to be faulted in this regard. If these concerns are taken care of there is no doubt that an independent director on board of bank will be a great asset to all stakeholders in the enterprise.

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