Chapter Nine

DEREGULATION AND CORPORATE GOVERNANCE

by

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ABSTRACT

This chapter appraises the basis and modes for deregulation of key sectors of the Nigerian economy and situates them in the emerging corporate governance frameworks prompted by inevitable domestic and global realities. It upholds the symbiosis of deregulation and privatisation of corporate entities but concludes in favour of formal governance of the corporate bodies in the deregulated and privatised industries. It also urges best practices on the contents of our corporate governance regulations and practices.

1.0 Introduction

For many decades of planned economy, Nigeria subjected many industries and much trade to many restrictions in the forms that included outright prohibitions, licences, permits, quotas. Government was in the domain of business initially because of the need to build public infrastructures at the founding of the nation. Over time however, there emerged the new economic policy to free the economy from the bondage of overregulation. Through liberalisation and deregulation, government decided to gradually free itself from dominant involvement in business enterprises so as to enable the private sector to lead the nation's economic growth and development.

In 2005, the Federal Government of Nigeria published a roadmap titled the National Economic Empowerment and

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process often does not focus on the market as a whole, but on specific industries so as to lift the restrictions facing them. The targeted limiting factors include licences, permits, quotas and the likes. It is a deliberate industrial policy choice. In Nigeria, specific regulatory bodies purposively superintend the deregulation of particular sectors of the economy.

Within the past one decade, Nigeria has vigorously pursued the policy of deregulation, not only of business enterprises but also the legal framework for the governance of enterprises within the deregulated industries. This has occurred in telecommunications, financial services, energy and transportation sectors of the economy. It follows the trend globally in developed economies such as the United States and emerging economies of Africa, Eastern Europe as well as other parts of the world. Significantly however, while the impetus for deregulation could be the same, there hardly could be said to be homogeneity in its implementation. The latter varies from industry to industry.

It is an interesting coincidence that the era of deregulation of industries is also that in which there has been persistent debate of, and experimentation with, deregulation of corporate governance. This raises the question not only of the effectiveness of industry deregulation but also of the corporate governance system and content that the deregulated corporate personalities are expected to adopt.[68]

3.0 Why Deregulate?

Deregulation is a direct response to the failure of public enterprises or corporations. These enterprises consume a huge proportion of national income without delivering public good. They '.... fail to allocate [scarce] resources efficiently; they create economic inefficiencies; they incur huge financial losses; absorbed disproportionate share of credit especially in the form of Paris and London Club loans, as well as domestic loans and

[68] See Olayiwola O Oladele, ibid (n 4).

advances; and contributed to consistent fiscal deficits.'[69] As Omolayole observed of the 1980s, government invested N20 billion in economic activities only to earn a disproportionate return of less than N3 billion.[70] The yield figure for the mid-1990s was even more disastrous. In that period, the *Vision 2010 Report* gave a paltry return of 2 per cent per annum on Federal Government colossal investment of N100 million in public enterprises.

Deregulation is based on government's preference of the efficiency of free enterprise to the inefficiency of controlled economy. Government suffered a diffused focus of engaging in governance and commercial activities simultaneously. It was a proverbial chasing of two rabbits at the same time with the attendant inability to catch any. As Akanbi submitted:

> In essence, government needed to reduce its role in the management of the economy, and in turn encourage increased private sector role and share in the economy. Instead of being the prime economic agent, government decided to facilitate private economic activities with the hope that private sector participation would become the rule rather than the exception and State intervention justified only when it would help the smooth operation of commerce.[71]

In addition to relaxing government regulation and facilitating optimal efficiency of business through market forces, deregulation also has the capacity to grow the capital market. It is significant that economic liberalisation and deregulation is

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[69] Oluade Amoda, 'Deregulation in Nigeria: Historical Overview, Motivation, status and Recommendations" <http://nigeriavillagesquare.disqus.com> accessed 11 August 2012 quoting from Bureau of Public Enterprise, 'Rationale for Privatisation' <www.bpeng.org/10/0317731656532b.asp?DocID=230&MenuID=5>

[70] M Omolayole, 'Wealth Creation in a Free Enterprise Economy" (1998) 3(4) *Modus International Law and Business Quarterly* 96.

[71] Muhammed Mustapha Akanbi, 'Privatisation and Commercialisation of Investments: How Beneficial are they to Developing Economies in Africa?' 11 *The Journal of World Investment and Trade* 3 (February 2010), 419 at 426, citing O Fafowora, 'Privatisation of Nigerian Commercial Utilities: Barriers and Constraints' (1998) 3(4) Modus International Law and Business Quarterly 37.

ongoing in more than 70 countries of the world as the pivots of the New World Economic Order so as to achieve efficiency and effective resource allocation as well as utilisation. These countries include those of Africa, Latin America, Eastern Europe and Asia.[72]

The government is moving the public sector out of the domain of the private sector so that the public sector's roles will be limited to areas of strategic importance. There is a progressive withdrawal of budgetary support for certain areas of the public sector in the bid to ensure operational efficiency. However, efficiency is achievable if support is based on inevitability. Government is divesting itself of shareholding in select public enterprises either partially or completely. These initiatives are similar to those of India and other emerging economies that are deregulating.[73]

In Nigeria, Nigerian Telecommunications Plc, the moribund telecommunication service provider and National Electric Power Authority (NEPA), the epileptic electricity provider, are two key examples of public utility corporations that have failed in all the areas identified above. They and their predecessors operated for a long time as inefficient monopolies funded by taxpayers and captive patrons' funds. Consumers were left at the mercy of these corporations, and have had to subsidise their inefficiency by paying for the services that were irregular while utilising alternative means of communication as well as generating their own electricity at great financial and, with electricity, ecological cost.

Government responded, albeit belatedly, by deregulating the mentioned and other essential services provision so as to make basic social and infrastructure services available to vulnerable and victimised groups as well as protect consumers from exploitation. It purposes to ensure efficiency, competitiveness and private sector-driven economic growth through deregulation and privatisation. This is achievable through a legal framework that is for consumer and investor

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[72] Ibid., 429.

[73] *See* BL Sharma, et al, (ed.) *Public Administration in Theory and Practice*, (Allahabad, Kitab Mahal 2011)163.

protection and against monopolistic and other unfair trade practices.[74] Laudable as these strategic goals are, the faltering service delivery of some key private telecommunication companies, and the seeming helplessness of regulatory authorities to call them to order, leaves much to be desired.

The thrust of government policy is still to promote economic growth and development as well as productive competition in business by providing an enhanced scope for private sector participation. To that effect, the Government of the Federal Republic of Nigeria proposes under NEEDS to, *inter alia*:

- Rapidly privatise key infrastructure services to ensure effective service provision.
- Enhance and enforce relevant laws to improve competition and protect consumer welfare in industries providing infrastructure services.
- Encourage private sector initiation and participation in the provision of infrastructure, using such methods as build-operate-and transfer (BOT), build-own-operate-and transfer (BOOT), rehabilitate-operate-and transfer (ROT) and concessioning.[75]

A strong and persuasive tenet for deregulation is that new businesses will emerge in the atmosphere of keen competition, and prices will fall to the benefit of consumers. Additionally, deregulation should also reduce the cost of civil governance since government stands to benefit from reduced cost of oversight. It is expected also that better products will emerge as do more providers. Creativity gains impetus as the strictures of regulatory bureaucracy is reduced.

Conversely, there is an enlightened apprehension that relaxation of applicable rules could result in unbridled "creativity" by industry players, and lead to monopoly on the

[74] *See* NEEDS, 58.
[75] Ibid, 59.

one hand and 'race for the bottom' on the other hand. This is playing out in the Nigerian telecommunications industry where some major companies have issued out more lines than their platform could carry, thereby causing congestion and call inefficiency. In addition, the location of masts in many significant cases does not appear to have gone through environmental impact assessment. Some are in fact sandwiched in between residential buildings. Deregulation does and should not mean absence of regulation and laxity in transparency as well as law enforcement but liberal accommodation by law.

The deregulation of financial services ushered in universal banking by which banks could combine commercial and investment (merchant) banking as well as open insurance and securities windows. The gross abuse that attended the operation of universal banking resulted in massive insider dealing. By that, bank CEOs, directors, managers, other insiders as well as their proxies applied depositors and shareholders' funds to speculative contrivances of scandalous dimensions that caused the financial market failures of the past few years. Huge life savings were lost at the further cost of enormous government bail-outs of major banks, and the Nigerian securities market is just recovering from the contagion, though many investors may never recover therefrom.[76]

The Nigerian financial system apparently learnt not from but forgot everything of the negativity of the 1980s deregulation of the United States savings and loan (S&L) industry pursuant to the Depository Institutions Deregulation and Monetary Control Act (DIDMCA) of March 1980, which is highly instructive. Commenting on the negative impact, an informed commentator recounts:

> That deregulation allowed S&L institutions to act more like banks and adopt a federal charter. This act made it possible for S&Ls to offer their customers more attractive interest rates on savings accounts, increase the limit on

[76] *See* Olayiwola O Oladele, *How Secure are Securities?* Inaugural Lecture Series 002 of Osun State University delivered on Wednesday, 16th February, 2011, 77pp, also available at <www.uniosun.edu.ng>

deposit insurance by 250 percent, and relax their restrictions somewhat on who could obtain a loan for developing, acquiring or constructing property. After the DIDMCA, and a number of other acts and reforms, gave the S&L industry significantly more autonomy to operate as it pleased, the industry began to collapse as lending got out of hand. The industry was so deregulated that lenders started approving their own loans, as well as those of unqualified borrowers who wanted large sums of money for risky ventures. Before too long, the S&L industry had lent much more money than it should have, leading to an estimated $150-billion government bailout.[77]

4.0 Vehicles of Deregulation and Corporate Governance

1. Licensing

Government targeted deregulation of petroleum products importation as well refining at competition that should ensure competition, efficiency and ultimately result into reduction in prices. It classifies petroleum importation and refining under open licensing to allow for participation therein by eligible private sector corporate bodies. Deregulation of pricing ought ultimately to bring in new firms and businesses, which through competition would make refined petroleum products available locally and removed the need for subsidy. However, the subsidy programme compounded the problem that it was meant to solve, and resulted in disincentive for investment in local refining.

The Presidential Steering Committee on the Global Financial Sector submitted that the Federal Government expended more than N680 billion as subsidy for petroleum products prices in 2008. Since then, the figures have geometrically increased. However, the subsidy did not achieve the desired purpose but went to spurious claims and engendered corruption as well as looting of the treasury. Today, many of the licences for domestic open operations in the downstream sector of the economy remain unutilised because

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[77] See <http://www.ehow.com/facts_7260593_purpose-deregulation_.html#ixzz22rP39Fgh> accessed 09 October 2012.

of projected lack of profitability. The axiom is, if much could be gained through false claims of subsidy, not many entrepreneurs would be willing to persevere in and risk the pain of huge capital outlay in expectation of uncertain future returns. Conversely, the telecom deregulation has worked, at least in keeping government not in the arena of business but in ensuring that it has more time to concentrate on governance and to facilitate business activities.[78]

A school of thought argues persuasively against total deregulation. By this argument, the deregulation of the downstream sector of petroleum industry or other sectors of the economy should be phased so as to "enable state-owned monopolies to regain efficiency" before they are fully privatised. The second school of thought argues that the fulcrum of globalisation is total deregulation, including complete "dismantling, unbundling and subsequent wholesale privatisation of all state-owned [petroleum] businesses. The third school is totally against liberalisation or deregulation because, among other things, it leaves Nigerians at the mercy of market forces that could be easily manipulated and looting in the guise of privatisation.[79]

The deregulation of the electricity sector of the economy takes form of privatisation and commercialisation. It breaks government monopoly of that sector by winding up the NEPA and incorporating in its stead the Power Holding Company of Nigeria (PHCN). The restructuring takes cognisance of the division of the enterprise of electricity provision into generation, transmission and distribution. It also recognises the facts that there is economic gain in vertically integrating the PHCN and other State-owned companies with private sector enterprises. From 1972 to 2005, the defunct NEPA controlled 94 per cent of

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[78] See also Okechukwu Eme, Innocent and Onwuka, Chukwujekwu Charles, 'The Political Economy of Deregulation Policy in Nigeria: The Challenges Ahead' (March 2011) *Journal of Business and Organisational Development*, Vol. 2, <http://www.cenresinpub.org/POLITICALECONOMY> accessed 06 November 2012.

[79] *See* Kòmbò Mason Braide, 'Modes of Deregulation in the Downstream Sector of the Nigerian Petroleum Industry' <http://nigerdeltacongress.com/marticles/modes_of_deregulation_in_the_dow.htm> accessed 06 November 2012.

power generation capacity as well as 100 per cent of its transmission, system operation, distribution and marketing. The system has transmission lines and generators that are subsumed into the national grid. The national grid has hydro and thermal stations.[80]

Generation of electricity is no longer a public utility monopoly but the field is open for competition by companies willing to do so. Transmission remains public utility but the lines are open to all suppliers. Distribution is still regulated as public utility.[81] Thus, successor companies have emerged to take over the functions, assets and liabilities of the moribund NEPA as a competitive electricity market is emerging under the regulatory auspices of the Nigerian Electricity Regulatory Commission (NERC). The Electric Power Sector Reform Act of March 2005 makes elaborate provisions for these purposes as well as for the licensing and regulation of generation, transmission and distribution of electricity and prescription of standards, obligations of participating companies, consumer rights as well as fixing of tariffs among other issues.[82]

The legal implication for all the forms of deregulation is that the corporate legal personalities operating in the deregulated environment will have to subject themselves to legislative framework and reforms that contain the cardinal features of the common law system. To all intent and purposes, the participating incorporated business associations will be bound by the provisions of the Companies and Allied Matters Act[83] and subject to the regulatory oversight of the appropriate regulatory authorities, including the NERC. If they have to raise funds on the capital market, they must realise, as John Coffee submitted that '....first, securities markets are fragile and could collapse; and second, expropriation by managers and

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[80] *See* 'Overview of Power Sector Reforms' available at <www.pbeng.org> (the official website of the Bureau of Public Enterprises) accessed 07 November 2012 . *See also* <http://www.nigeriaelectricityprivatisation.com> accessed 07 November 2012.)

[81] *See* Restructured Power System <http://www.energyguide.com/finder/deregintro.asp> accessed 07 November 2012.

[82] For more on deregulation of this sector, see Oluade Amoda, ibid.

[83] Cap C20 Laws of the Federation of Nigeria 2004.

controlling shareholders could (and did) occur on a massive scale.'[84] To that effect, they have to adopt the formal and persuasive best practices in corporate governance for the benefits, not only of the corporate insiders but other stakeholders too.

In broad principle advocacy, the emerging corporate governance framework should follow the path set by OECD principles in promoting transparent and efficient markets as well as in bearing consistency with the rule of law and clearly delineating the duties and powers of regulatory, supervisory and enforcement authorities. It also ought to protect the rights of shareholders as well as the means of their enforcement. This entails treating domestic and foreign shareholders equitably and recognising the rights of all stakeholders under the law or mutual agreements so that the gains of deregulation could be sustained.[85] Disclosure of material corporate information will have to be full, transparent and compliant with line item requirements and other best practices requirements that assure value to all stakeholders.

2. Concessioning

The Infrastructure Concession Regulatory Commission (ICRC) has as its key strategic objective facilitating "investment in national infrastructure through private sector funding by assisting the Federal Government of Nigeria and its Ministries, Departments, and Agencies (MDA) to implement and establish effective Public Private Partnership's (PPP) process." States may be involved in, and responsible for, PPP projects. However, the Federal Government undertakes to provide financial guarantee for many PPP projects within the States

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[84] C John Coffee Jr., 'Privatisation and Corporate Governance: The Lessons from Securities Market Failure' *in* Merritt B. Fox and Michael A. Heller (eds.) *Corporate Governance Lessons from Transition Economy Reforms*, (Princeton University Press, Princeton 2006) 272.

[85] See Bob Tricker, *Corporate Governance Principles, Policies, and Practice*, (Oxford University Press, Oxford 2009) 159.

according to the best practices under its own guidelines and policy.[86]

The partners in PPP projects could proceed by jointly setting up a 'Special Purpose Vehicle/Entity (SPV/SPE). This is usually a subsidiary company with a legal status and an asset/liability structure that secures its obligations even if the parent company goes bankrupt. It is also known as a "bankruptcy-remote entity" whose businesses are restricted to the acquisition and financing of specific assets. The unequal personalities of the parties to the PPP project commend the choice of this organisational form.

3. Privatisation and Commercialisation

In a bold effort to jettison public sector-driven economic development for free market-led one, Nigeria, the Federal Government enacted the Public Enterprises (Privatisation and Commercialisation) Act.[87] As the title suggests, the goal is to provide for the privatisation and commercialisation of certain public enterprises. To that effect, the Act established the National Council on Privatisation and the Bureau of Public Enterprises with diverse functions and powers.

The Privatisation and Commercialisation Act classifies the target public enterprises to be privatised into two. Part I of the First Schedule to the act has the list of the enterprises for partial privatisation. Part II of that Schedule contains the enterprises for full privatisation.[88] The National Council on Privatisation ("the Council") established under section 8 of the Act has power to intermittently add to, delete from or amend the list as it may by order publish in the *Gazette*.[89]

The sale of the shares of all public enterprises being privatised shall be by public issue or private placement. Where the sale is by public issue, it necessarily should be on the

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[86] <http://www.icrc.gov.ng/> accessed 07 November 2012.
[87] Cap P38, Laws of the Federation of Nigeria 2004. The pioneering statute was the Privatisation and Commercialisation Decree of 1988 enacted by the defunct military government of Nigeria.
[88] Ibid., Section 1(1) and (2).
[89] Section 1(3).

capital market. However, the Council may, instead of public issue or private placement, approve the sale by a willing seller to a willing buyer or through any other mode.[90] In addition to the scheme for partial privatisation, the Government of the Federation may by periodic policy guidelines and decisions divest of its shareholding in the privatised enterprises. For this purpose, the Council may dispose of the shares or a part of it even in international capital market.[91]

The Council has the power to 'determine the political, economic and social objectives of privatisation and commercialisation of public enterprises' as well as approve the enterprises to be privatised or commercialises. It may also set the legal and regulatory framework for the enterprises and 'determine whether [the sale of] the shares of a listed public enterprise should be by public or private issue or otherwise and advise the Government of the Federation accordingly.' It also may 'review, from time to time, the socio-economic effects of the programme of privatisation and commercialisation and decide on appropriate remedies.'[92]

The Bureau of Public Enterprises (the Bureau), *inter alia*, advises the Council on the capitalisation needs of the public enterprises that are up for privatisation, facilitates the issue of the shares and sale of assets of the public enterprises to be privatised, advises the Council of the structure of the share sale, supervises the sale of the shares by issuing houses according to Council guidelines, and ensures 'the success of the privatisation exercise, taking into account the need for balance and meaningful participation by Nigerians and foreigners in accordance with the relevant laws of Nigeria'[93]

The Public Enterprises (Privatisation and Commercialisation) Order, 2004[94] provides that Government may offer 51 percent of its shares in the privatised enterprise to Core Investors. The staff of the enterprise may also have up to 10 percent of the shares offered for sale to the public reserved

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[90] Section 2.
[91] Section 3.
[92] See generally, section 11.
[93] Section 13, generally.
[94] S.I. 17 of 2004.

for them. This raises issues in majority rights and minority protection to which the present turns presently. One may posit here that the structure of shareholding impacts the size, depth and liquidity of the capital market. The latter depends heavily on how qualitative the legal protection of shareholders in that jurisdiction is. An arrangement that gives 51 percent shareholding to core investors institutionalises concentrated ownership. Other privatised enterprises may however be organised on a system of dispersed or fractional ownership.

According to Coffee, contemporary scholarship in financial economics emphasises 'both the centrality of legal protection for minority shareholders and the possibility that regulation can outperform private contracting'.[95] He adds that the centrality of protection must be attended not only by effective enforcement but also by a strong incentive to seek remedies for infraction even after the legal system has provided them.[96] Coffee argues convincingly further:

> The critical question becomes, does local law establish adequate disclosure and market transparency standards, restrict insider trading, and adequately regulate takeovers and corporate control contests? If it does, then arguably the exposure of shareholders to unfair self-dealing transactions at the corporate level may have only a second-level significance.[97]

The argument turns on the conclusion that privatisation has failed in some transitional economies of which Poland and Czech Republic are examples, due to inchoate or inadequate securities regulation. In the early 1990s, the Czech Republic rushed into privatisation without adequate regulatory foundation. Instead, it embarked on ex-post development of regulatory controls in response to many crises and scandals that arose. In a concerted move to established a private-sector led economic growth, the authorities privatised some 1,491 joint

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[95] John C. Coffee, ibid 266
[96] Ibid.
[97] Ibid.

stock companies in the Czech first phase of privatisation. It privatised 861 in the second phase. These actions moved her private sector share of the gross domestic product ("GDP") from 12 per cent in 1990 to 74 percent in 1996, a real gargantuan leap.[98]

Czech Republic wrongly assumed that that her securities market would naturally develop simultaneously with privatisation, and there would be an active secondary market in the securities of the privatised enterprises. Fallaciously, the authorities believed that dispersal of ownership through voucher privatisation would achieve that. Though investors showed initial optimism which drove up share prices till 1995, corporate and securities market scandals soon caused great loss of confidence by investors and drove them off. Foreign direct and portfolio investment fell from the 1995 level of $103 million to $57 million in 1996. In 1997, the investment was in the negative, and by 1998, the economy had entered into recession, compelling the authorities to set up a Securities and Exchange Commission to check the race for the bottom.[99]

The lesson for Nigeria from the foregoing is plain, topical and contemporary. The country has rules on her statute books but we need enforcement will. The experience of the past four years that led to the near collapse of the securities market, and a massive loss of investment, including life savings, is highly instructive. The rules have been there all along, and since then, there has not been any fundamental change in our financial regulations. The problem is with enforcement. Investors' protection at the corporate and market levels should be of high priority.[100]

Strong corporate law also plays an important role in preserving the targeted gains of deregulation through privatisation. The scandals that attended the Czech

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[98] Ibid. at 274. *See also* John C Coffee Jr., 'Inventing a Corporate Monitor for Transitional Economies: The Uncertain Lessons from the Czech and Polish Experiences' in Klaus J. Hopt et al. (eds.) *Comparative Corporate Governance: The State of the Art and Emerging Research*, 67, 1998, 122-125.

[99] Ibid. at 273.

[100] *See generally* Oladele, Olayiwola Owoade, *How Secure are Securities?* at <www.uniosun.edu.ng> accessed 07 November 2012

privatisation included looting ('tunneling' out the fraudulent siphoning off)[101] of corporate assets by the controlling insiders. The looting of many of the investment funds escaped regulation. The extant regulation was so lax that it had the loophole that allowed investments banks to deregister so as to become unregulated holding companies. An investment company could remove itself from the reach of regulation by simply returning its operating licence to the regulators. Dispersed ownership of the investment companies made it possible for stakeholders with as meagre as 10 percent voting powers to pass a resolution converting the enterprise to a holding company or even reincorporating outside the jurisdiction of the Czech Republic.[102]

The axiom is that regulation and law enforcement matters. It is for this reason that this contributor had argued elsewhere against unregulated deregulation of corporate governance disclosures, concluding that they must be mandatory and not permissive.[103] In rejecting the tenet of the modern law-and economics literature on corporate governance, the preceding leading scholarly voice of Coffee had submitted that:

> [The] claim that financial contracting largely renders regulation irrelevant cannot explain...the close correlation between a given country's level of capital market development and the nature of its legal system. The more logical conclusion is that law does matter, and regulation can somehow better promote economic efficiency than can reliance on financial contracting alone. By themselves, private contracting and the voluntary incentives for disclosure seem incapable of producing the level of continuing disclosure necessary to sustain active securities markets.[104]

Privatised enterprises did not evolve overtime but are creatures of government fiat. The manager and the shareholders are

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[101] Coffee, ibid 270.
[102] Ibid, at 277.
[103] *See* Olayiwola O Oladele, Ibid (n. 4).
[104] Coffee, ibid 267.

brought together by legal abruptness. The managers have not contracted with the shareholders '... nor pledged a reputational capital that they have carefully built over the years.'[105] Formal government regulation of the governance of these enterprises is important. The 2001 definition of corporate governance by the Organisation for Economic Co-operation and Development (OECD) is highly instructive.

> Corporate governance refers to the private and public institutions, including laws, regulations and public institutions, which together govern the relationship, in a market economy, between corporate managers and entrepreneurs, on the one hand, and those who invest resources in corporations on the other.

It is established that privatisation is valuable in eliminating inefficiency, weak management and informational asymmetry in State-owned enterprises provided that there is no looting, uncertain property rights, weak government oversight, legal and corporate governance frameworks.[106] Opinion however is divided on the type of control that government should exercise on the privatised enterprises. One school of thought argues that the lesser government ownership and control are the more shareholders' profit maximisation is assured by yielding the enterprises to market forces. Another school of thoughts is of the view that government insures the expectation of investors to receive returns on their risky investments if the State retains a major equity holding in the privatised enterprises. This enables government to provide stability and credibility as well and intervene appropriately in favour of the shareholders in the post-privatisation period.[107]

Burkhard tested the viability of the two positions above as well as the desirability of sudden or gradual privatisation. He

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[105] Ibid. at 267-268.

[106] *See* Akanbi, ibid at 430, Hanousek, Jan et al, 2004 'Ownership Control and Corporate Performance after Large-Scale Privatisation' *William Davidson Institute Working Paper No. 562*, University of Michigan Business School.

[107] NS Burkhard, *Three Essays on Investment and Risk assessment in Emerging-Market Countries*, unpublished doctoral thesis, The Fletcher School of Law and Diplomacy, Tufts University, Medford, MA (2002)

found that gradual but credible privatisation is more reassuring to investors in emerging markets, and it has the propensity of offering long-term benefits to the market and investors alike. The investors in such markets do not expect government to sit in a state of detached altruism. The fact that they see government as "performance insurer" by the stake it retains in enterprises being progressively privatised make them more secure in investing.[108]

Ultimately, the role being urged on government in the process of privatisation is not that of undue interference but that of enabler, facilitator and provider of enabling environment for foreign investment. Happily, the Government of the Federal Republic of Nigeria has adopted and is implementing the policy of gradual privatisation. Government role in the post-privatisation period must however ensure policy stability and supportive infrastructures to reduce the cost and risk of doing business in the country.

In the post-privatisation period, particularly in partially privatised enterprises, government role in preservation of the value conferred on the investors is an important means by which the efficiency of the private sector-driven economic system will be assured. It is strategically significant that government has implemented the policy of partial privatisation of some key enterprises with a statutory undertaking to further divest its shareholding in the privatised enterprises and dispose of its shares through local or international capital market. If an investor would assume that investing in an enterprise where the State is a co-owner guarantees lesser risk and higher returns, the assurance that government involvement gives should engender his key interest in government assets that will be privatised in future.[109]

CONCLUSION

Deregulation is offers an important way out the inefficiencies and failures that have bedevilled the path of Nigeria and many

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[108] Ibid.
[109] See Akanbi, ibid 432.

other emerging market countries path to sustainable economic development. The vehicles employed by the Nigerian legal system towards it have global patronage. The legal and regulatory institutions that should support the initiative are emerging. The extant rules as well as ongoing reforms should adequately cope with the process if adequately and purposefully harnessed towards the desired goals of efficiency and sustainable development. Phased deregulatory policy that Nigeria adopts is commendable. However, the big problem with Nigeria is transparency and lack of the will to enforce oversight regulation.

Nigeria ought to learn from other transition and emerging economies so as to avoid the failure of the process. The best practices in corporate governance that protect the interests of all the stakeholders must be adopted.