'CIVIL REGULATION' AND CORPORATE SOCIAL PERFORMANCE ENHANCEMENT*

Abstract

Just as human beings want to live and operate in an environment free from state's regulations or control or, at least, with minimum of it, companies wish to operate in a nation or environment with barest degree of state's control. They prefer an environment where they will pursue their corporate economic goals or objectives with little or no state's intervention. Such a state's control-free environment, they believe, will aid them in accomplishing their quest to maximise their corporate profit. Undoubtedly, having a corporate environment totally free from state's control or legislative intervention is hardly obtainable in any country in the world. Some states, however, have very well-entrenched and stiff mandatory regulatory control of the corporations operating within their jurisdictions with severe sanctions or penalties for non-compliance. Oftentimes, these state's regulation or control have a stifling or choking effects on the corporations. This, therefore, cause some corporations to seek a country with minimum state's control of its activities. In the companies' quest to reduce or minimise state's intervention or control of their corporate activities with their attendant hardships and negative effects on the companies' purse, some companies have, on their own, devised some means to self-regulate or co-regulate itself or themselves knowing that state's conventional regulation may prove tough and difficult to be complied with. Some 'wise' or 'smart' companies have, thus, voluntarily given themselves certain benchmarks of social behaviour in the form of codes of acceptable corporate conduct and other self-regulatory or voluntary frameworks. The researchers set out to see whether this corporate self-regulation and co-regulation, otherwise generally referred to as 'civil regulation', has the tendency or capacity to trigger companies to be socially and ethically responsible, responsive and integrative of the interests of the corporate stakeholders. This the researchers did through the adoption of doctrinal research methodology. The researchers are of the view that where these self-imposed corporate regulations are religiously adhered to by the companies concerned, it will help to curb or reduce state's legal regulatory interventions as well as improve the reputational image of the company concerned with its attendant positive impact on the economies of the company. It will also help the company to eschew corporate behaviours, policies and decisions that are irresponsible, unfriendly and inimical to the environment, local communities and other corporate stakeholders.

Keywords: Civil Regulation, Corporate Social Performance, Enhancement, Responsibility

1. Introduction

It is now widely recognised in the regulatory literature that state regulation makes up only a small part of the total set of mechanisms that society relies on to steer business behaviour towards socially desirable ends.[1] Presently, corporate responsibility issues are attracting more attention globally. This, in turn, has made companies' activities to be subjected to more intense scrutiny, especially as regards the extent to which they are committed to acting responsibly and also discharging their wider responsibilities. Again, market actors, social monitors, local community, among others, are arguably willing and ready to use their position and information available to them to positively influence corporate conducts. Government and its agencies, in some jurisdictions, are also ready to slam companies with higher and tougher legal regulations in the event of their inability to live up to the expected level of responsibilities. All these tend to force companies to be sensitive to the way their corporate performance is perceived. Consequently, companies, on their own volition - and sometimes in conjunction with the government[2] and other regulatory agencies – are strategising and embarking on activities to enhance their corporate reputation by engaging in measures that tend to spur them to be more attentive to their social and environmental responsibilities.[3] Thus, some companies are adopting varied forms of self- and co-regulatory frameworks, now popularly known and called 'civil regulation' which is self-made or self-imposed as against those mandatory legal rules or regulations made and imposed on the companies by the State and its agencies. Hence, a number of big companies are now devising corporate codes of conduct targeted at effecting corporate

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[1] J. Parkinson (2003) 'Disclosure and Corporate Social and Environmental Performance:' Competitiveness and Enterprise in a Broader Social Framework' 3 JCLS 3, at p 28.

[2] Private regulatory mechanisms are generally dependent in some ways on State's support.

[3] A. Andersen (2000) *Ethical Concerns and Reputation Risk Management: A Study of Leading UK Companies*, London. He noted (at p 9) that 'the desire to protect or improve reputation is the most common factor influencing the development of business ethics activities in organisations.' It may be add that the need to prevent or curb government intervention through tougher regulations is one of the major factors that prompt companies to devise means to, at least, create the impression that they are acting responsibly.

and managerial behavioural change - social and ethical wise - by committing to higher corporate standards and ethics.

Some commentators are, however, not convinced about the effectiveness of these codes and other self-regulatory measures, perceiving them instead to be more of window-dressing, aimed at changing the perception of the society about the company without actually bringing about the desired change.[4] Often, the companies are accused of lack of total and genuine commitment to these codes. For transparency purposes, it is necessary that those companies should publish information (periodically) about their performance targets and the extent to which those targets are being met.[5] This will enable the success or otherwise of this strategy to be judged. Of course, as companies tend to paint a brighter picture of their achievements in these kinds of sphere, the need for independent auditing/assessment of the report should be highlighted. Similarly, the need for a standardised form of assessments among companies especially those in the same sector must be stressed since it may not be easy to determine whether a particular company's social or environmental performance is worse than that of its competitors unless there are clear standards of assessment.

Another corporate response to public pressure for improved social and environmental performance is the creation of self-regulatory frameworks at industry level. Industry schemes may arise to regulate the activities of firms in a given industrial sector where the firms appreciate a collective need to protect the industry's reputation, and induce compliance with improved standards in firms throughout the sector. However, as in the case of corporate codes of conduct, such schemes are sometimes viewed with scepticism - as some people view them as shams aimed at fending off genuine government regulations, or to raise barriers to entry (of new entrants/firms into the industry) with a view to restricting competition, without major determination and honesty on the part of the industrial sector to bring about the necessary positive change in the industrial behaviour.[6] Nonetheless, some schemes have the tendency to 'bring the behaviour of industry members within a normative ordering responsive to broader social values.'[7] A good example of industry scheme in the UK is the chemical industry's *Responsible Care* programme. The programme entails the chemical industries committing themselves to the 'improvement of all aspects of their performance that relates to health, safety and the environment.'[8] It has led to the development of a number of detailed codes of practice with great emphasis on the need for community consultation and participation. It is largely formulated or designed to redress the poor public reputation of the industry which has, *inter alia,* caused difficulties in recruiting managerial and scientific talents, and also 'a loss of public support, a regulatory backlash, [and] extreme difficulty in persuading communities to accept new chemical installations in their locality'[9] Firms operating in the Nigerian oil industry should consider adopting such an industry-wide scheme to redeem their presently tattered image and bring about environmental, social and human right considerations across board. One of the likely merits of industry scheme is that it has the tendency of stimulating compliance with improved standards in all the firms in the sector, instead of restricting compliance to just those companies which, owing to their size or public profile, are especially exposed to reputational pressure. To ensure the effectiveness of the industry self-regulatory scheme and widespread compliance, means of enforcement of the rules of the programme may be put in place.[10] Of another great importance for the potency of the scheme is the need for them to produce two kinds of information: detailing the normative standards the industry has set for itself, and the performance of member companies in terms of those standards.[11] Spurred by the need to demonstrate that they are living up to the (societal) expected standards, a number of companies have the zeal and incentives to co-operate in devising 'co-

[4] See Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above, n 1), at pp 19-21.
[5] See P. Willetts 'Political Globalisation and the Impact of NGOs upon Transnational Companies' in J.V Mitchell (ed.) *Companies in a World of Conflict: the NGOs, Sanctions and Corporate Responsibility*, (1998), London: Earthscan, 224.
[6] N. Gunningham and J. Rees (1997) 'Industrial Self-Regulation: An Institutional Perspective' 19 Law and Policy, at pp 388-370.
[7] Ibid, at p 364.
[8] N Gunningham (1995) 'Environment, Self-Regulation and the Chemical Industry: Assessing Responsible Care' 17 Law and Policy 57, at p 61.
[9] Ibid, at p 60. 'Responsible Care' has now been adopted by chemical industries in over 40 countries: International Council of Chemical Associations, *Responsible Care Status Report 2000*.
[10] See generally, Gunningham (ibid), at pp 67-68, 90-95. Compliance can also be monitored by government and its agencies, and other third parties, eg, NGOs. Thus, Gunningham argued that 'government intervention is necessary to ensure that the industry association performs its self-regulatory tasks honestly and effectively, to provide extra leverage where the industry association's efforts and powers are insufficient to change the behaviour of the recalcitrants, to regulate the behaviour of those who refuse to participate in the self-regulatory scheme, and to intervene directly where the gap between industry self-interest is too large for self-regulation alone to be a credible strategy.' Ibid, at p 87.
[11] Gunningham and Rees (above, n 6), at p 383.

regulatory schemes' - that is, schemes in which credible outsiders[12] and the companies themselves team-up together in setting standards and monitoring compliance.[13]

As can be gathered from the above discussion, business and civil society are, jointly and severally, adopting an increasing systematic approach to corporate responsibility issues. Having appreciated the advantages in encouraging and promoting private sector regulation as a flexible and comparatively 'business friendly' method for raising corporate standards, governments have not laidback in stimulating the gesture.[14] Thus, conventional or state regulation currently constitutes just a fraction of the total set of mechanisms upon which the society relies on to steer the corporation into behaving more responsibly[15] - as private regulation: 'by industry associations, by firms, by peers, and by individual consciences'[16] - also plays a key role. Having recognised the limitations of direct state regulation, regulatory theorists have become increasingly interested in the potential softer, procedural or reflexive interventions, designed to stimulate or increase the potency of private modes of control as a (supplementary) regulatory technique. These modes of control - consisting of 'processes through which rules are built around and within markets', and involving 'organic governance structures and processes that go beyond elements of the cut-and-thrust forms of [intervention] into more institutionalised rule-based frameworks'[17] - are popularly referred to as 'civil regulation'.[18] Arguably, 'civil regulation' - which envisages that there will be more (voluntary) compliance from companies to higher standards than those set by law – has a close nexus with corporate social responsibility (CSR).[19] In other words, it can be seen as a facet of CSR; and can also be viewed from the perspective of regulatory theory. Currently, regulatory theorists are showing growing interests in informal and private sector forms of control.[20] Arguably, these perspectives now overlap, as CSR takes on 'a more law-like form,'[21] and the regulatory theory pays greater attention to the peculiar characteristics of the entities that are the subject of regulation. The strengths and weaknesses of civil regulation in bringing about ethical and integrative corporate behaviour will now be examined.

2. Strengths and Weaknesses of Civil Regulation:

As already noted, CSR has been a contentious issue thus resulting in the emergent of two major factions - shareholder primacy and stakeholder approach crusaders.[22] Advocates of shareholder primacy approach do stress the limitations in the capacity of external regulatory controls to curtail corporate irresponsible conduct that is damaging to third parties or to the society.[23] Thus, Blair echoes that corporate stakeholder approach is yet to make any appreciable progress as it has been unable to furnish any clear guidance to aid directors 'set priorities and decide among competing socially beneficial uses of corporate resources, and provided no obvious enforcement mechanism to ensure that corporations live up to their social obligations.'[24] While this comment may seem too

[12] For instance, trade unions, NGOs, and maybe government.

[13] Some examples include: Ethical Trading Initiative – a scheme brokered by the UK Government and it provides a 'base code' governing labour standards in supply chains. It has been adopted by some retailers. Another is CERES (the US-based Coalition of Environmentally Responsible Economies). It has drawn up principles of environmental responsibilities, which companies are urged to adopt.

[14] See, for example, Better Regulation Task Force, *Alternative to State Regulation* (London, Cabinet Office, 2000).

[15] See Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above n 1), at p 28.

[16] Ayres, I and Braithwaite, J (1992*) Responsive Regulation: Transcending the Deregulation Debate,* New York: OUP, at p 3.

[17] S Zadek (2001) *The Civil Corporation: The New Economy of Corporate Citizenship,* London: Earthscan, at p 10.

[18] Broadly speaking, the expression refers to 'market and other forms of pressure for improved corporate social and environmental performance and business response to those pressures involving self- and co-regulatory initiatives and compliance with 'third party' voluntary codes that, in turn, largely depends on continuing public pressure and market sanctions as a means of enforcement.' J. Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above n 1), at p 23.

[19] Before late 2011, EC defined CSR as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders *on a voluntary basis*.' (Emphasis added). See Commission of the European Communities, Green Paper *Promoting a European Framework for Corporate Social Responsibility* (Brussels, 2001) COM(2001) 366 final, para 20.

[20] Haines, for instance, noted a 'shift in the literature on business regulation towards corporate responsibility, and the new possibilities this holds for regulatory theory.' See Haines, F (1997) *Corporate Regulation: Beyond 'Punish and Persuade',* New York: OUP, at p 2.

[21] Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above n 1), at p 24.

[22] J.A Eze (2017) 'The Corporate Objective Question: In Whose Interests Should a Company be Run in Nigeria?' COOULJ, Vol. 3 No 1, p 147.

[23] See for instance, C.D Stone (1975) Where the LAW Ends: The Social Control of Corporate Behaviour, New York: Harper and Rows, chs 16 and 17.

[24] M.M Blair (1995) *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century,* Washington: Brookings, at p 203. For this and more, see J.A Eze, (2020/2021) 'Can Directors in a Shareholder Primacy and Enhanced Shareholder Value (ESV) Regimes Be Public-Spirited?' COOUJCPL, Vol 3, No. 2, p 21.

dismissive of the possibility of devising an institutional means of reordering corporate objectives and priorities, there are, no doubt, some problems with inclusive stakeholder approach. For instance, the difficulty in fashioning out appropriate, working and workable stakeholder representation at board level or other means of stakeholder participation,[25] putting in place suitable accountability mechanisms and the difficulty of creating and enforcing pluralist duty.[26] At the same time, the prospects for a solution that relies solely on fostering an ethical commitment on the part of managers and directors within a permissible legal framework (as against imposition of enforceable legal duty) 'seem poor.'[27] The situation is not being helped by the product market competition and the market for corporate control, among others, which ultimately set limits to socially responsible behaviour that has significant adverse impact on profitability, and arguably, discourages it.[28] As a result of these and other similar difficulties, civil regulation seems to have a number of merits as a means of enhancing corporate social and environmental performance in Nigeria. This is owing to the fact that it neither depends on altruism nor requires problematic corporate governance reform. Instead, it works with the grain of the profit motive - by penalising companies for socially irresponsible behaviour and rewarding them for exemplary ones.[29] Under the traditional shareholder primacy approach - which is currently in practice in Nigeria, companies are not expected to do more than maximise profits within the law. More is, however, expected of them than simply 'business as usual'. The managerial team must make a strategic response to external pressure that may require going beyond merely complying with law. This may result in increase in costs. From the company's viewpoint, incurring such costs will be worthwhile (only) if the market penalties for failing to adopt higher standards are likely to have more inroads to profitability.

Positively, one of the features of civil regulation is the 'codification' of standards of conduct. This feature is, to some extent, addressing the content and enforcement problems bedevilling corporate stakeholding or pluralist approach.[30] Whether firm-specific, industry-wide, co-regulatory or devised by an external body, codes of conduct add specificity to otherwise indeterminate obligation on the company to improve social welfare. The development of voluntary rule systems associated with civil regulation can therefore be seen as part of a process of building up normative guidance and expertise in implementation in areas of ethical judgment where complex tradeoffs are sometimes required.[31] Codes do have the potential or capability of providing a focus for market enforcement, in that, as it is often difficult to establish whether or not a particular company's social and/or environmental performance is worse than that of its competitors in the absence of clear standards of assessment, 'the standards set by codes create a reference point for comparison that might provide a basis for action against companies whose behaviour is unacceptable.'[32] Again, by making a public commitment to uphold certain values and standards of conduct, companies 'raise the stake' in that they may face increased market penalties if they fail to meet the commitment.[33] Explaining the above situation, Gunningham and Rees put it thus - company, 'by clarifying the normative standards it set for itself.....also provides more precisely defined measures for evaluating and criticising its performance.'[34] Again, publication of standards has the tendency of generating 'new expectations of accountability...including demands for more concrete and specific norms.'[35]

These merits notwithstanding, Parkinson, nonetheless, cautioned that there may be in existence different codes from various sources laying down different (and sometimes, conflicting and confusing) standards.[36] The ensuing confusion may affect the companies' understanding of what is actually expected of them, and may also lead to the compromising of the process of external assessment, since 'the most inadequate voluntary code can be hyped by the company concerned- while even excellent ones are difficult to defend against critics.'[37]

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[25] See, J.A Eze, (2018) 'To Whom Do Company Directors Owe Their Directorial Duties? The Position in Nigeria and the United Kingdom' 1 COOUJCPL I, p 112.

[26] These last two points are the major bane of the scholarly debates embarked upon by Berle and Dodd on the merit of departing from duty owed exclusively to the shareholders. See Weiner, J.L (1964) 'The Berle-Dodd Dialogue on the Concept of the Corporation' 64 Columbia L.R 1458.

[27] Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above, n 1), at p 24.

[28] See D. Million (2011) 'Two Models of CSR' 45 Wake Forest L.R 523, at pp 529 and 536; Parkinson (ibid), at p 24

[29] In other words, 'Civil regulation relies on market forces to 'enforce' higher standards of social performance, but in a way that does not require a departure from the profit goal.' Parkinson (above, n 1), at p 25.

[30] J.A Eze (2018) 'Issues with the Adoption of Corporate 'Pluralist' Approach' 1 COOUCPL 1, 231.

[31] See K. Gordon (1999) 'Rules for the Global Economy: Synergies between Voluntary and Binding Approaches' *Working Papers on International Investment No 1999/2* (Paris, OECD, 2000).

[32] Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above, n 1), at p 25.

[33] See Gunningham and Rees (above, n 6), at pp 385-386; Rees, J (1997) 'Development of Communitarian Regulation in the Chemical Industry, 19 Law and Policy 477, at p 512.

[34] Gunningham and Rees, (ibid) at p 383.

[35] Ibid.

[36] Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above, n 1), at p 26.

[37] International Council on Human Rights Policy, *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies* (Switzerland, Versoix, 2002), at p 19. See also EC, *Communication from the Commission*

Another major problem of civil regulation is the issue of short-termism. That is, it is likely going to be undermined by short-termism, in that, since its potency is premised on companies attaching (great) value to their reputations, where however, the companies in question are financially marginal; are under pressure from the stock market to improve profitability; or rely on managerial incentive pay schemes that reward near-term financial performance, there is the likelihood that reputation enhancement or management may be accorded low priority. This does not imply that civil regulation is totally ineffective in bringing about corporate behavioural change, as there are some companies that are long-term conscious, and see developing and sustaining a positive reputation as an important aspect of long-term strategy. But, the issue of short-termism draws attention to a limitation of market enforcement, in addition to the aforementioned issues. Market pressures regarding social performance do not necessarily force companies to comply or respond. Companies' response is dependent on the weight or degree of importance they attach to short- and long-term costs and benefits. Arguably, where socially responsible practices involve increased costs, corporations that adopt them may be 'vulnerable to undercutting from competitors, perhaps smaller and lower-profile companies that do not face the same pressures to comply with higher standards. This means that efforts to raise standards will often be fragile and the chances of success affected by market structure.'[38]

Arguably, civil regulation does not bring about a change in corporate objective from shareholder wealth maximisation to stakeholder-oriented approach. It rather 'expands the constraints to which the profit goal is subject.'[39] On the other hand, the effects of civil regulation are not necessarily restricted to promoting a narrowly calculative attitude to satisfy outside pressures. Since issues that attract public attention are not easily predictable, companies need therefore to adopt a more values-based approach. It can therefore be concluded that civil regulation, by taking advantage of companies' own incentive structures, is likely to lead to better practical outcomes than relying on moral invocation alone as CSR tends to do, or relying on their 'punitive' strengths as conventional regulations do.[40]

3. Advantages of Self- and Co-Regulation over Reliance on 'Conventional' Regulation:

To be able to treat this issue very well, it is good to note some of the limitations/weaknesses of conventional regulation. Two of them are: technical and politico-economic limitations.[41] There will now be a discussion of each which takes into consideration their relative merits and drawbacks, and seeks an assessment of the most beneficial approach in the overall. Discussion then progresses to looking specifically at how civil regulation might be able to address some of the identified limitations.

Technical Limitations:

It has been pointed out that public rule-making and enforcement are often remote from the businesses whose behaviour they seek to change. The government does have only limited information about companies' activities and the processes they employ and how it (i.e., the government) can minimise their negative impacts. This is especially the case in Nigeria where comprehensive and objective research is sometimes not conducted before rules/regulations are made. Consequently, there is the possibility for controls put in place to be either under- or over-inclusive. In other words, they may be unable to cover or catch all forms of harmful conducts, or may interfere with legitimate corporate activities.[42] Again, unnecessarily costly standards may be imposed: in environmental arena, for instance, where specific technological pollution control may be mandated, but companies could be able to get the same or a similar result at a reduced cost by alternative means. Under-inclusiveness becomes an issue because regulation through externally imposed rules does seem to cause or trigger compliance. This is, however, not always so in the sense that though the rules may be complied with, those subject to them may either not know the underlying rationales or purposes behind them, or pay little or no regard to those purposes.[43] In such cases, their compliance with the rules may be half-hearted and unenthusiastic. Another closely related problem is that government does lay down uniform rules/standards for every company (in the sector). This

Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development COM(2002) 347 final (Brussels, 2002), para 3, recommending measures to promote standardisation.

[38] Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above, n 1), at pp 26-27. See also Zadek (above, n 17), at pp 33-36. Avoidance of undercutting is one of the reasons behind industry-wide self-regulation. Again, it can also cause leading companies in the sector to press for mandatory regulation.

[39] Parkinson (ibid), at p 27.

[40] Ibid, at p 27.

[41] Ibid, at p 29.

[42] See R. Baldwin and M. Cave (1999) *Understanding Regulation: Theory, Strategy and Practice*, New York: OUP, pp 103-106.

[43] For instance, with regard to health and safety regulation, it has been suggested that for many companies the aim is just to satisfy the legislative requirements, rather than to focus on the needs of health and safety itself: F. Haines (above, n 20), ch 8; A.J Hoffman, (2001) *From Heresy to Dogma: An Institutional History of Corporate Environmentalism*, Stanford: Stanford University Press, especially ch 4.

becomes an issue in that government's consciousness not to impose obligations which many companies will find too difficult or impossible to meet may cause it to make regulations that have the 'lowest common denominator'. This uniformity of standards does not give companies that could, without disproportionate expense, perform above the statutory minimum the incentives to do so. It is, thus, not socially optimal. It has also been argued that relatively static rules do not provide businesses with any motivation to explore innovative approaches to reducing regulated hazards or adopting a programme of continuous improvement. Again, state regulation has been accused of not being proactive, but 'necessarily reactive, and often reacts slowly to new sources of harm.'[44] So, sometimes, before the state will react to the damaging or ugly situation, a grave harm has already been done. State's reaction, often, tends to be remedial or curative than preventive.

Politico-Economic Limitations:

This has to do with the state's consideration of its economic interest and economic wellbeing in deciding whether or not to impose regulations. It is noteworthy that the consciousness of the impacts of the international integration of markets and global mobility of capital and the way they constitute hindrance to the willingness of governments to regulate corporate activities is not limited to developing nations alone.[45] As a nation's economy depends, to a great extent, on the drive and efficiency of its companies,[46] every country is, undoubtedly, conscious not to stifle its economy through too stiff and/or over-regulation of corporations operating in the country.[47] That is, even the developed countries generally have the fear and concern that tougher regulations will affect their economic competitiveness by making it more difficult for them to attract inward investments and cause the transfer of existing ones to less strict countries.[48] Consequently, Nigeria - a developing country with many economic challenges which, as such, appreciates the importance of corporations in providing economic benefits in the country, and is seriously yearning for foreign investment capital as a means to economic growth and prosperity - is unlikely going to be very regulative of corporations, but would rather provide legally hospitable environment for them even if it entails the rights of her citizens and other stakeholders being (slightly) curtailed. Though the extent to which the government has lost the ability to set its own regulatory agendas should not the exaggerated, such limitations call into question how far we can rely on state regulation alone to create a framework of constraints on business that fully reflects popular preferences.

4. How Civil Regulations may overcome some of these Limitations:

Civil regulation can, to some extent, make up for some of the limitations of conventional regulations. By reducing the gap between the corporate self-interest and the public interest, market pressure for improved social performance can stimulate companies to self-regulate. This can either be on an individual basis, collective, industry schemes, or through participation in co-regulatory or other voluntary frameworks.[49] With respect to technical limitations, these forms of control have some merits in that they bring the standard-setting process closer to the activities to be regulated. Thus, standard may be devised with the peculiar/specific circumstances of the company or industry in mind, reducing problems of under- or over-inclusiveness. Again, unlike legal rules, public pressure is not premised on eliciting a finite behavioural response, but rather may reflect open-ended expectations about improved social performance. This incentivises companies to keep every aspect of their conduct under regular review and to commit themselves to programmes of continuous improvement. For instance, self-regulatory frameworks sometimes require the adoption of management systems that envisage the progressive raising of performance targets. Another merit is that stakeholder involvement in standard setting or company engagement in on-going dialogue with stakeholders - which some schemes require - facilitates learning and innovation, potentially leading to the adoption of standards that strike a better balance between corporate and third party interests. Furthermore, private rule making can respond more rapidly to new problems created by corporate

[44] Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above n 1), at p 30. See also Stone (above, n 23), at p 94.

[45] It should be recalled that one of the UK Company Law Review's objectives was to enact or create 'law for a competitive economy.'See CLRSG, *The Strategic Framework*, London, (DTI, 1999) at p 8.

[46] M. Lipton and S.A Rosenblum (1991) 'A New System of Corporate Governance: The Quinquenial Election of Directors' 58 University of Chicago L.R 187, at p 192; B.R Cheffins 'Trust, Loyalty and Cooperation in the Business Community: Is Regulation Required?' in Barry Rider (ed.), *The Realm Of Company Law: A Collection of Papers in Honour of Professor Leonard Sealy* (1998) 58, at pp 61-62. See also 'Cadbury Report': *The Report of the Committee on the Financial Aspects of Corporate Governance, London*: Gee, 1992, para 1.1.

[47] See D. Millon (2012) 'Enlightened Shareholder Value, Social Responsibility and the Redefinition of Corporate Purpose without Law' in P.M Vasudev and S Watson edn, GB: Edward Elgar Publishing, at p 92. The reasons that made the UK government to reject a pluralist approach was its consciousness not to undermine the country's economic competitiveness in the world economy through imposing such a seemingly complicated pluralist duty with unpredictable consequences on its economy.

[48] See Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above, n 1), at p 31.

[49] Parkinson noted that the threat of state regulation has the potential of having a similar effect, though the response is more likely to be sectoral than an individual company response. Ibid.

activities than can the legislative process. Again, companies may be more inclined to comply with rules which they participated in formulating than those impose on them from outside or by outsiders.[50]

Parkinson pointed out that the problem with politico-economic limitations is not the difficulty of crafting legal rules that respond appropriately to offending behaviour. It has, instead, to do with practical obstacles to creating and enforcing binding regulations. He noted that with regard to labour standards and conditions in developing countries, while a framework of legally enforceable controls may be the preferred option to reliance on civil regulation, the latter may act as a close substitute where the former is not achievable.[51] Civil regulation also helps in building a normative consensus and laying the foundations of a monitoring and enforcement infrastructure.[52] Again, in the event of government's reluctance to legislate for reasons of international competitiveness, by bypassing government, civil regulation has some chances of strengthening the constraints within which businesses operate.

5. To what Extent have Civil Regulations Succeeded in Overcoming the Limitations of Conventional Regulation?

Though the importance of civil regulation in enthroning sanity and socially acceptable behaviours amongst companies can never be over-emphasised, the extent to which it has actually succeeded in surmounting the said limitations of conventional regulation in practice appears questionable. As already highlighted, companies' response is often designed to 'create an appearance of change rather than a genuine improvement in performance.'[53] This therefore underscores the need for disclosure and transparency about corporate impacts, the standards companies set for themselves, and the extent to which they have succeeded in meeting those standards. Arguably, disclosure cannot guarantee the success of non-mandatory initiatives, since whether companies have the incentives to comply may depend on public pressure and associated market penalties, and any other means of enforcement a scheme puts in place. The pressure, for reasons already discussed,[54] may not be adequate to bring about a turnaround or close the gap between corporate self-interest and the public interest. All these, however, do not mean that civil regulation is totally ineffective - as signs exist suggesting that its scope and potency are increasing.[55] Inferably therefore, if well harnessed, civil regulation is one of the promising ways of enthroning responsible corporate behaviour in Nigeria. This is so owing to manifest shortcomings inherent in our mandatory legal regulatory framework or approach, such as poor enforcement mechanisms, snail-speed court proceedings whereby certain cases last up to a decade, corrupt enforcers, high cost of litigation, among others, which make such legal approach not to be marvellously effective in enthroning world best ethical and socially responsive corporate conduct in Nigeria. It is the strong believe of the researchers that in order to achieve the desired corporate conduct in Nigeria, multi-faceted approach, which *inter alia* includes a combination of both legal and civil regulatory approach, orienting and re-orienting the board of directors on the need to be integrative, socially and ethically-minded, should be adopted as these approaches are complementary to one another. Detailed and accurate corporate information disclosure and a uniformed reporting process should also be encouraged as they are desirable for effective monitoring of the success of the civil regulatory approach.

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[50] See Gordon (above, n 31), at pp 10-12.

[51] It is believed that civil regulation can, in appropriate circumstances- especially in the event where legal regulation is unable to deal effectively with a given situation because of its limitations, either valuably supplement or complement it. See Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above, n 1), at pp 31-32; I. Ayres and J. Braithwaite (1992) *Responsive Regulation: Transcending the Deregulation Debate*, New York: OUP, at pp 110-116. But, the European Commission has emphasised that codes of conducts and other civil controls should not be seen as substitutes for binding law: Commission of the European Communities, Green Paper *Promoting a European Framework for Corporate Social Responsibility* (Brussels, 2001) COM(2001) 366 final, at para 22; Commission for the European Commission, *Communication from the Commission Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development* COM(2002) 347 final (Brussels, 2002), para 5.1.

[52] See Gordon (above, n 31), at pp 10-12; International Council on Human Rights Policy, (above, n 37), at p 9.

[53] Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above, n 1), at p 32.

[54] Principally among them are: variance in the degree to which various companies are exposed to public attention and pressure; and the concern or area of interest of those able to exert the pressure are restricted in range. Again, oftentimes, they are unable to sustain the pressure for a long duration so as to bring about the desired result. See Haufler, V (2001) *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy*, Washington: Carnegie, at pp 76-78.

[55] See generally, J. Parkinson 'Disclosure and Corporate Social and Environmental Performance' (above, n 1), at pp 32-33. He refers to it as 'a largely positive development.' Ibid, at p 33; and as 'a significant phenomenon with some potential to advance the 'corporate social responsibility' agenda and to compensate for the limitations of conventional regulation.' Ibid, at p 36.