



Paul Usoro & Co  
LEGAL PRACTITIONERS

# **CODE OF CORPORATE GOVERNANCE**

**2018**

# INTRODUCTION

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In Nigeria, there was a void in the corporate sector due to the absence of a comprehensive legislation in corporate governance regime. However, this absence was mitigated for by sector-specific corporate codes issued by their respective regulators to address this challenge.

In order to consolidate the various codes of different sectors and establish a unified corporate governance framework, the Financial Reporting Council of Nigeria (“FRCN”), released the National Code of Corporate Governance 2016. However this was suspended as there were questions relating to its legality and how it may negatively impact the ease of doing business in Nigeria.

This changed on 15 January 2019, when the Vice President, Prof. Yemi Osinbanjo and the Honourable Minister of Trade and Investment, Dr. Okechukwu Enelamah unveiled the Nigerian Code of Corporate Governance 2018 (“NCCG 2018” or the “Code”) which had been earlier approved by the FRCN.

The Code seeks to drive the best corporate governance practices in Nigeria by promoting public awareness of essential values and ethical practices aimed at enhancing the integrity of the business environment.

Due to the Code’s multi-sectoral applicability and the need to ensure ease of compliance, it adopts a principle-based approach. It recognises that successful compliance relies on the recommended principles being scalable to suit the type, size and growth phase of each company while still achieving the outcomes. Therefore, it prescribes that companies should adopt the “Apply and Explain” approach. This means that the companies should apply all the principles and also explain how the principles have been applied.

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1. Code of Corporate Governance for the Telecommunication Industry 2016 issued by the Nigerian Communications Commission, Code of Corporate Governance for Banks and Discount houses 2014 issued by the Central Bank of Nigeria, Code of Corporate Governance for Public Companies in Nigeria 2011 issued by Securities Exchange Commission, Code of Good Corporate Governance for Insurance Industry in Nigeria 2009 issued by National Insurance Commission, and the Code of Corporate Governance for Licensed Pension Fund Operators 2008 issued by National Pension Commission.

# Key HIGHLIGHTS OF THE CODE

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## **BOARD OF DIRECTORS**

The Board of Directors (the “Board”) are required to have a charter setting out their responsibilities. The Board should also have an appropriate balance of skill and diversity (diversity here alludes to age, gender, experience) without compromising competence and independence. It should be of sufficient size to effectively undertake and fulfil its business while considering the following factors such as a mix of knowledge, skill and experience.

## **CHAIRMAN, AND MANAGING DIRECTOR/CHIEF EXECUTIVE OFFICER**

The Code prescribes a separation of the office of the Chairman of the Board and the Managing Director/Chief Executive Officer (“**MD/CEO**”).

The Chairman is responsible for the overall leadership of the company and the Board in order to ensure that the Board works towards achieving the intended objective(s). The Code further requires the Chairman to be a Non-Executive Director (“**NED**”). As for the MD/CEO, the Code places a restriction on such persons from becoming the Chairman of the same company. It only allows this possibility in exceptional circumstances and stipulates a three (3) year cooling-off period. Instructively, what constitutes an exceptional circumstance is not defined by the Code, hence the Board can tailor it to fit their organisational dictates.

## **INDEPENDENT NON-EXECUTIVE DIRECTORS**

In addition to NEDs, an Independent Non-Executive Director (“**INED**”) is also instrumental for the purposes of injecting a high degree of objectivity to the Board. An INED is a NED, who does not possess a shareholding in the company in excess of 0.01% of the paid-up capital of the company, not a representative of a shareholder that has the ability to control or significantly influence management etc. The Codes takes a step further into providing for a non-exhaustive criteria to maintain their independence. Furthermore, the Code fixes the tenure of INED to a maximum of three terms of three years each, and frowns against the reclassification of a NED as an INED.

## **BOARD MEETINGS AND COMMITTEES**

The code recommends that the Board meets at least once a year to enable it perform oversight functions and monitor performance. Additionally, the Board is also enjoined to delegate its duties to well-structured committees. These committees are to comprise of at least three members, and well-composed to handle the following functions:

- Nomination and Governance;
- Remuneration;
- Audit; and
- Risk Management.

## **INDUCTION AND CONTINUING EDUCATION AND BOARD EVALUATION**

Boards are required to establish a formal induction programme for new directors of the company to assist them in discharging their duties in line with the company's culture and objectives. To ensure the development of directors, the Code mandates all directors to participate in periodic programmes to update their knowledge and skill base. The Chairman and the Committee responsible for nomination and governance are charged with ensuring that training programmes is in place for new and present directors, while the Company Secretary is responsible for the coordination of these programmes.

## **BOARD AND CORPORATE GOVERNANCE EVALUATION**

The Code prescribes that Boards should have an annual evaluation of its own performances, as well as that of the Chairman and individual Directors by an independent external consultant. The Code also nudges the Board to set up a system for evaluating the company's corporate governance practices.

## **REMUNERATION GOVERNANCE**

Companies are to adopt a remuneration structure that links rewards to corporate and individual performance and also long-term corporate performance with regards to the Executive Directors and MD/CEO. The remuneration of the NED should be fixed by the Board and

approved by the shareholders in a general meeting. NEDs are also precluded from earning any performance-based incentives.

A clawback policy to recover excess or underserved reward has also been introduced. This can be triggered if the financial performance on which the reward was based is later found to be materially false or in violation of company policy.

## **INTERNAL AUDIT FUNCTION**

Companies are recommended to establish an internal audit function which provides assurance to the Board on the effectiveness of the governance, risk management and internal control systems. The purpose of the function is to be clearly defined in an internal audit charter. If the Board decides not to establish same, sufficient reasons for such should be disclosed for in the annual report. The function should be headed by a member of senior management, who is a professional with relevant qualifications and competence. The effectiveness of the function should be externally assessed once every three (3) years by a qualified independent reviewer

## **WHISTLE BLOWING**

Boards are required to establish a framework to encourage stakeholders to bring unethical conduct and violations of laws and regulations to the attention of an internal/external authority. This authority will then conduct an investigation and apply appropriate sanctions. The mechanism should guarantee that the source of any information is anonymous and that the matter is handled confidentially. Whistle blowers are protected under the Code as it stipulates that no whistle blower should be subject to any detriment on the basis that he has made a disclosure. Any whistle blower who suffers detriment by reason of disclosure is entitled to compensation and/or reinstatement as the case may be.

## **EXTERNAL AUDITORS**

External auditors are to be appointed by the Board to provide independent opinion on the true and fair view of the financial statements of the company to give assurance to stakeholders on the reliability of financial statements. The recommendations should be made to the Board by the committee responsible for audit. The tenure of office of the auditors a

of a company should be no longer than ten (10) years. Additionally, where the tenure of an auditor has exceeded ten (10) years and the firm has been disengaged, they cannot be considered for reappointment until after seven (7) years. Companies are required to rotate audit engagement partners after every five (5) years. There is a mandated cooling-off period of three (3) years between retirement of a partner from an audit firm and his appointment to the Board of audit client.

## **BUSINESS CONDUCT AND ETHICAL CULTURE**

Companies should establish policies to monitor insider trading, related party interest and any possible conflict of interest. The policy on conflict of interest should be communicated and monitored to ensure that any potential conflict of interest situations will be disclosed. There is a cooling off period of three (3) years before a person who has served at the directorate level of a relevant regulatory institution is appointed as director or top management of staff in a company that has been supervised by such regulatory body.

## **ENFORCEMENT AND MONITORING**

While there are no spelt-out sanctions for non-compliance with the provisions of the Code, the implementation of the Code will be monitored by the FRCN through the sectoral regulators and registered exchanges who are empowered to impose appropriate sanctions based on the specific deviation noted and the company in question.

# CONCLUSION

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The unveiling of the Code is a practical step towards inculcating best governance practices in Nigeria. Furthermore, the principle-based approach reduces the cost of compliance, especially for small businesses, as it would have been under a rule-based system. It is however a bit unclear, whether the provisions of the Code will supersede those of other sector-specific codes. Although, two of the sector-specific codes provide that in a situation of conflict, the code with the stricter provision(s) will apply. Additionally, the voluntary nature of the Code may make it subject to sector-specific codes.

Generally, the Code is expected to boost investors' confidence and improve the standard of corporate governance in Nigeria.

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## CONTACT US

### LAGOS OFFICE

3rd Floor, Plot 1668B  
Oyin Jolayemi Street  
P O Box 71605,  
Victoria Island,  
Lagos, Nigeria.

Tel: +234 (01) 2714842-5  
Fax: +234 (01) 2714846  
Email: [info@paulusoro.com](mailto:info@paulusoro.com)

### ABUJA OFFICE

Abia HouseCentral  
Business District,  
Abuja, Nigeria.

Tel: +234 (09) 623 2182  
Email: [info@paulusoro.com](mailto:info@paulusoro.com)

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