

OVERVIEW OF THE NIGERIAN CORPORATE GOVERNANCE CODE 2018

January 30th, 2019

The Financial Reporting Council of Nigeria (“FRCN”) issued the Nigerian Code of Corporate Governance 2018 (“the Code”) on 15 January 2019. The Code is made pursuant to the powers of the FRCN under Sections 11c and 51c of the Financial Reporting Council of Nigeria Act 2011.

The objective of the Code is to institutionalise corporate governance best practices in Nigerian companies. The Code is also to promote public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment.

WHAT ENTITIES DO THE CODE APPLY TO?

The Code applies only to public listed entities and significant public interest entities. Public interest entities are those companies who file return to regulatory bodies other than the CAC and FIRS. Many of such companies are public companies.

In the case of private companies, the code will be a reference towards implementing corporate governance best practices. Hence, private companies are encouraged to adopt the code.

However, where a private company files return to regulators such as SEC, CBN NAICOM amongst others; the code shall apply as such private company will be regarded as a significant public interest entity (SPE) under the FRCN Act.

Philosophy of the code

The Code is aimed at companies of varying sizes and complexities across industries. Accordingly, the Code adopts a principle-based approach in specifying minimum standards of practice that companies should adopt.

ARE THE RECOMMENDED PRACTICES IN THE CODE OPTIONAL?

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parts. The recommended practices are based on these principles and some of them have been embedded in codes issued by various regulatory bodies such as CBN, NAICOM and SEC with strict sanctions for non-compliance

The implementation of this code will consequently be monitored by FRCN through the sectoral regulators and registered exchanges who are empowered to impose appropriate sanctions based on the specific deviations noted.

Additionally, the FRC may conduct reviews on the implementation of the Code where deviations from the Code recur. Other monitoring mechanisms adopted by the FRC will be based on its review of the level of implementation of the Code.

Companies should therefore adopt the “Apply and Explain” approach in reporting on compliance with this Code. The ‘Apply and Explain’ approach assumes application of all principles and requires entities to explain how the principles are applied. This requires companies to demonstrate how the specific activities they have undertaken best achieve the outcomes intended by the corporate governance principles specified in the Code.

The seven (7) parts are summarized below:

A. Board of Directors

The code has emphasised that the “main purpose of the board is to provide entrepreneurial, strategic and ethical leadership to a company, ensure that management is acting in the best interest of owners and other stakeholders through the board’s advisory and monitoring roles, and in the process enhance and sustain the prosperity of the company over time.”

The principles under this section includes:

Board Structure and Composition

The Code specified the requirements for board structure and composition (appropriate balance of knowledge, skills, experience, diversity and independence) to enable it effectively undertake and fulfil its role in directing the affairs of the Company.

Officers of the Board

The code specified the following as officers of the board

1. The Chairman
2. Managing Director/Chief Executive Director
3. Company Secretary
4. Executive Directors
5. Non-Executive Directors
6. Independent Non-Executive Directors

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Meeting of the Board

The board shall meet at least once every quarter and every Director should endeavor to attend all Board meetings.

Board Committees

Every board shall establish

- nomination and governance committee,
- remuneration committee,
- audit committee, and
- risk management committee.

Performance Evaluation

The board shall develop a process for, and ensure that the Board undertakes, an annual performance evaluation of itself, its committees, the Chairman and individual Directors, as well as the Company's corporate governance practices.

B. Assurance

Risk Management

The Board is responsible for the oversight of enterprise-wide risk management. The Board shall oversee the establishment of a management framework that defines the company's risk policy, risk appetite and risk limits. The framework shall be formally approved by the Board and ensure that it is communicated in simple and clear language to all employees.

Internal Audit Function

The purpose, authority and responsibility of the internal audit function should be clearly and formally defined in an internal audit charter approved by the Board.

Where the Board decides not to establish such a function, internally or outsourced, sufficient reasons should be disclosed in the Company's annual report with an explanation as to how the Board has obtained adequate assurance on the effectiveness of the internal processes and systems such as risk management and internal control.

Whistle-Blowing

Every company is required to have whistle blowing policy. The Code also provide that the whistle-blowing mechanism shall include a dedicated telephone "hot-line", e-mail address, and other electronic communication methods that could be used (even anonymously) to report illegal or unethical practices.

External Auditors

The Code prescribes that the Statutory and Board Audit Committee shall have the primary responsibility for making a recommendation to the board on the appointment, reappointment and removal of external auditors.

C. Relationship with Shareholders

General Meetings should be held for the Board to engage shareholders to facilitate greater understanding of the Company's

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business, governance and performance. This gives shareholders an opportunity to exercise their ownership rights and express their views to the Board on any areas of interest.

D. Business Conduct and Ethics

Every company shall have a Code of Business Conduct and Ethics which shall be regarded as part of the corporate governance practices of the company.

E. Sustainability

The Board should pay attention to sustainability issues including environmental, social, occupational and community health and safety. This ensures successful long-term business performance and projects the Company as a responsible corporate citizen contributing to economic development.

F. Transparency

Companies should ensure full and comprehensive disclosure of all matters material to investors and stakeholders, and of matters set out in the code.

Going Concern

The Board should use its best judgment to disclose any material matter even though not specifically required by this Code to be disclosed if in the opinion of the Board such matter is capable of affecting the present or anticipated financial condition of the Company or its status as a going concern.

Corporate Governance Evaluation

Every company shall carry out annual corporate governance evaluation which shall be facilitated by an independent external consultant who must be registered by the regulator for this purpose.

The report of this evaluation shall be presented at the company's annual general meeting and a copy of the report sent to the regulator and made accessible on the investors' portal of the company.