

NIGERIAN CODE OF CORPORATE GOVERNANCE 2018

By

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Agenda

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- ✓ ***Work Methodology***
- ✓ ***Stakeholder Engagement Sessions***
- ✓ ***Code Philosophies***
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Introduction

- ❖ In line with the section 50 of the Financial Reporting Council of Nigeria Act, 2011 and following a rigorous process, the National Codes of Corporate Governance for Private Sector and Not-for-Profit Organizations were issued by the Council on 17 October 2016, effective immediately.
- ❖ Following wide criticism of the Codes, they were suspended by the Honourable Minister of Industry, Trade and Investment on 28 October 2016.
- ❖ Subsequent to a change of FRCN leadership, a fifteen-man Technical Committee, composed of industry professionals and individuals with Corporate Governance expertise, was constituted to review the suspended National Codes.
- ❖ The Technical Committee adopted a phased approach in carrying out its assignment starting with the review of the National Code of Corporate Governance for the Private Sector bearing in mind the following guiding principles:
 - ▶ Rebuilding public trust and confidence.
 - ▶ The need to promote ease of doing business and facilitate trade and investment.

Terms of Reference for the Technical Committee



Membership of the Technical Committee

Mr. Muhammad K Ahmad (Chairman)	Ms. Benkedikter Molokwu (Deputy Chairman)	Mr. Kofo Abdusalam-Alada (CBN)	Prof. Fabian Ajogwu, SAN (Society for Corporate Governance)
Alhaji Garba Abubakar (CAC)	Mrs. Tomi Adepoju (Auditors/KPMG)	Mr. Tijjani M Borodo (Independent)	Mr. Godstime Iwenwkhai (NSE)
Mr. Abdulrahman Saleem (PENCOM)	Mrs. Olutola Omotola (ICSAN)	Prof. Nat Ofo (Igbinedion University, Okada)	Prof. Chris Ogbechie (Lagos Business School)
Mrs. Uto Ukpana (Telecom/MTN Nigeria)	Mr. Nicholas Okpara (NAICOM)	Mrs. Maryam Sallau (SEC)	Mr. Nelson Anumaka (FRC Management Liaison & Secretary to the Committee)

Work Methodology

- ❖ Review content of the suspended Codes to ensure consistency with the best practices and alignment to government's Ease of Doing Business Initiative.
- ❖ Adopt a phase and evolutionary approach to the National Code by focusing first on the Private Sector.
- ❖ To conduct a two-level consultative and collaborative process through Focused Groups Stakeholder Engagement Sessions across the country.
- ❖ We have done the first level in Lagos and Abuja.
- ❖ The second level will hold simultaneously during the period the exposure draft is issued to the public for comments.
- ❖ It will be in the six (6) geo-political zones + FCT.

Work Methodology (ctd.)

- ❖ Performed extensive literature review on extant laws and sectoral regulations as well as key trends in corporate governance of organizations in Nigeria.
- ❖ Conducted several consultative and collaborative focus group sessions with key stakeholders, including the following:
 - ▶ - Key Industry Players;
 - ▶ - Professional Bodies;
 - ▶ - Major Professional Services Firms;
 - ▶ - Top 20 most capitalized equity holders in Nigeria;
 - ▶ - Recognized Bodies;
 - ▶ - Regulatory Agencies;
 - ▶ - Institutional Investors; and
 - ▶ - Leading Legal Practitioners.

Work Methodology (ctd.)

- ▶ Participated in brainstorming session with Ansie Ramalho, South Africa's King IV Project Lead, aimed at garnering the learning points from the experience of reviewing the King IV Code and obtaining stakeholder buy-in and compliance.
- ▶ Performed several sessions of detailed rigorous reviews of the suspended codes, taking into account stakeholders' comments received.
- ▶ Determination of the Code Philosophy to govern the revised National Code of Corporate Governance

Stakeholder Engagement Sessions

- ❖ To explain the Code.
- ❖ Seek their input and identify their concerns.
- ❖ Benefit from their collective wealth of experience.
- ❖ Secure sense of ownership and stakeholder concurrence.
- ❖ To minimise resistance and ensure voluntary compliance.
- ❖ To strengthen and build strong relationship with primary and other regulators.
- ❖ It is about dialogue, building partnership and open communication.

Stakeholder Engagement Sessions (ctd.)

1

Code philosophy- Mandatory versus Voluntary (Comply &/ or Explain versus Apply &/or Explain)

2

Applicability of Code: Lack of clarity on definition of Public Interest Entity

3

Conflicts of certain provisions with existing legislation such as CAMA and FRC Act and Sector Codes

4

High cost of governance: Minimum board size of 8, Number of INEDS required on Boards and percentage of EDs to NEDs

5

Concept of Lead Independent Directors

6

Tenure and re-election of Directors; Maximum tenure of 15 years for EDs who become MDs

7

Long cool-off period for engaging the former staff of regulatory agencies on a board

8

Mandatory Joint External Audit; lack of definition of non-Nigerian Partners; mandatory audit firm rotation; long cool-off period

9

Prohibition on outsourcing of internal audit services

10

Short transition arrangement

Code Philosophies

Corporate Governance codes all over the world generally follow two approaches:

Rules-based Approach

This approach instils the code into law with appropriate penalties for non-compliance. This is the model in place in the US.

Principles-based Approach

This approach requires companies to adhere to the spirit rather than the letter of the code – they must either adopt the code or explain why they have not done so through reports to the appropriate body and relevant stakeholders. This is the model in place in the UK, South Africa and other jurisdictions.

The Principles-based approach may be practicalised using any one of the following principles:

01

Comply or Explain: This principle requires companies to state that they have complied with the requirements of the code or explain why they could not do so

02

Apply or Explain: This principle requires companies to apply requirements of the code or to explain why they could not do so.

03

Apply and Explain: This principle assumes application of all principles, and requires entities to explain how the principles are applied.

The Choice for a Nigerian Code of Corporate Governance

- ❖ The Nigerian Code of Corporate Governance has adopted the ‘Apply and Explain’ principle.
- ❖ The decision to adopt the ‘Apply and Explain’ approach was made after careful consideration of several factors, including the following:
 1. The Nigerian Legal System.
 2. Nigerian Culture and History
 3. Government structure and policies.
 4. The state of the Nigerian economy.
 5. The global economic and political climate.
 6. Levels of capital inflow or investment coming into the Country.

The Choice for a Nigerian Code of Corporate Governance

Apply Principles: All Principles are ideals that companies should strive for in their governance journey. The principles are basic and fundamental to good governance, and application of the principles is therefore assumed.

Explain Practices: It is expected that companies should provide explanations in the form of a narrative account referencing their practices that demonstrates the application of the principles. The explanation should address which recommended or other practices have been implemented and how this delivers the outcome of the principle.

The practices recommended in the Code are positioned at the level of governance best practices but may not be applied at the same level by all companies. It is expected that companies would adopt scaled practices in demonstrating the principles in accordance with the following proportionality considerations particular to the company:

1. Size of company (turnover/workforce)
 2. Resources
 3. Extent and complexity of activities
- Since the Code is not a set of rigid rules, it is the responsibility of the Companies that are governed by the Code and their Boards to use the flexibility and scalability provided by the Code. To manage the cost of governance, each organisation can determine its governance structures, as long as they are consistent with the principles and recommended practices outlined in the Code.

Application of the Code

- ❖ All public companies (whether listed or not).
- ❖ All private companies that are holding companies of public companies and other regulated entities.
- ❖ Concessioned and privatised companies.
- ❖ Regulated Private Companies.

Application of the Code (ctd.)

- ❖ A sectoral regulator may issue guidelines on sector specific corporate governance matters and enforce compliance with such guidelines with appropriate sanctions as may be prescribed therein.
- ❖ Where there is a difference between the provisions of this Code and any sectoral governance guidelines, the stricter provision shall apply.
- ❖ An entity should report on the application of this Code in its annual financial statements for the periods ending on or after January 1, 2020.
- ❖ Earlier application is encouraged. If an entity applies this Code for a period before January 1, 2020, it shall disclose that fact in its annual financial statements.

Highlights of the Code

7 Parts

Number of sections in the Code – Part A - G



28

Principles

Corporate Governance ideals that companies should strive to embed



231

Recommended Practices

Governance best practices to be adopted on a scaled level by each company depending on their growth trajectory



Highlights of the Code

Principle Number	Principles	Number of Recommended Practices
Principle 1	A successful Company is headed by an effective Board which is responsible for providing entrepreneurial and strategic leadership as well as promoting ethical culture and responsible corporate citizenship. As a link between stakeholders and the Company, the Board is to exercise oversight and control to ensure that management acts in the best interest of the shareholders and other stakeholders while sustaining the prosperity of the Company	15
Principle 2	The effective discharge of the responsibilities of the Board and its committees is assured by an appropriate balance of skills and diversity (including experience and gender) without compromising competence, independence and integrity	9
Principle 3	The Chairman is responsible for providing overall leadership of the Company and the Board, and eliciting the constructive participation of all Directors to facilitate effective direction of the Board.	7
Principle 4	The Managing Director/ Chief Executive Officer is the head of management delegated by the Board to run the affairs of the Company to achieve its strategic objectives for sustainable corporate performance	7
Principle 5	Executive Directors support the Managing Director/ Chief Executive Officer in the operations and management of the Company	5
Principle 6	Non-Executive Directors bring to bear their knowledge, expertise and independent judgment on issues of strategy and performance on the Board	6

Highlights of the Code

Principle Number	Principles	Number of Recommended Practices
Principle 7	Independent Non-Executive Directors bring a high degree of objectivity to the Board for sustaining stakeholder trust and confidence	5
Principle 8	The Company Secretary plays an important role in supporting the effectiveness of the Board by assisting the Board and management to develop good corporate governance practices and culture within the Company	8
Principle 9	Directors are sometimes required to make decisions of a technical and complex nature that may require independent external expertise.	2
Principle 10	Meetings are the principal vehicle for conducting the business of the Board and successfully fulfilling the strategic objectives of the Company	3
Principle 11	To ensure efficiency and effectiveness, the Board delegates some of its functions, duties and responsibilities to well-structured committees, without abdicating its responsibilities.	40
Principle 12	A written, clearly defined, rigorous, formal and transparent procedure serves as a guide for the selection of Directors to ensure the appointment of high quality individuals to the Board.	12
Principle 13	A formal induction programme on joining the Board as well as regular training assists Directors to effectively discharge their duties to the Company	4

Highlights of the Code

Principle Number	Principles	Number of Recommended Practices
Principle 14	Annual Board evaluation assesses how each Director, the committees of the Board and the Board are committed to their roles, work together and continue to contribute effectively to the achievement of the Company's objectives	6
Principle 15	The Board ensures that the Company remunerates fairly, responsibly and transparently so as to promote the achievement of strategic objectives and positive outcomes in the short, medium and long term.	13
Principle 16	Institutionalising a system for evaluating the Company's corporate governance practices ensures that its governance standards, practices and processes are adequate and effective	2
Principle 17	A sound framework for the management of risk and effective internal control system is essential for achieving the strategic objectives of the Company.	7
Principle 18	An effective internal audit function provides assurance to the Board on the effectiveness of the governance, risk management and internal control systems	7
Principle 19	An effective whistle-blowing framework for reporting any illegal or unethical behaviour minimizes the Company's exposure and prevents recurrence.	7
Principle 20	An external auditor is appointed to provide an independent opinion on the true and fair view of the financial statements of the Company to give assurance to stakeholders on the reliability of the financial statements	8

Highlights of the Code

Principle Number	Principles	Number of Recommended Practices
Principle 21	General Meetings are important platforms for the Board to engage shareholders to facilitate greater understanding of the Company's business, governance and performance. They provide shareholders with an opportunity to exercise their ownership rights and express their views to the Board on any areas of concern.	6
Principle 22	The establishment of a system of constant dialogue with shareholders balances their needs, interests and expectations with the objectives of the Company.	4
Principle 23	Equitable treatment of shareholders and the protection of their statutory and general rights, particularly the interest of minority shareholders, promote good governance.	4
Principle 24	The establishment of professional business and ethical standards underscores the values for the protection and enhancement of the reputation of the Company while promoting good conduct and investor confidence.	11
Principle 25	The establishment of policies and mechanisms for monitoring insider trading, related party transactions, conflict of interest and other corrupt activities, mitigates the adverse effects of these abuses on the Company and promotes good ethical conduct and investor confidence.	11
Principle 26	Paying adequate attention to sustainability issues including environment, social, occupational and community health and safety will project the Company as a responsible corporate citizen contributing to economic development.	11

Highlights of the Code

Principle Number	Principles	Number of Recommended Practices
Principle 27	Communicating and interacting with stakeholders, keep them conversant with the activities of the Company and assists them in making informed decisions.	4
Principle 28	Full and comprehensive disclosure of all matters material to investors and stakeholders, and of matters set out in this Code ensures proper monitoring of its implementation which engenders good corporate governance practice.	7

The Technical Committee has also developed draft Frequently Asked Questions (FAQs) on the Code for the Public Hearings/Sensitization in the six geo-political zones of the country and the FCT for the final review and issuance by management when the Code is finalized.

Conclusions

- ❖ The failure of one poorly managed financial institution can put the entire system in jeopardy.
- ❖ This was obvious in the case of Lehman Brothers and the financial crisis of 2008-2010.
- ❖ This is why the attention of managers should be directed more and more to appropriate behaviour that ensures reliability of the information provided to stakeholders.
- ❖ Accordingly, adherence to the principles of corporate governance is key to safe business and that is how sound system and financial stability can be achieved and sustained.

Conclusions(ctd.)

- ❖ Today's domestic and international investors are likely to shy away from countries that do not:
 - Guarantee investor rights.
 - Provide for adequate corporate disclosures.
 - Ensure sound Board practices.
- ❖ According to **NELSON MANDELA**, “Action without vision is only passing time, vision without action is merely day dreaming, but vision with action can change the world.”

Conclusions(ctd.)

In order to achieve the outcomes of good and effective Corporate governance, all organisations should have:

- ❖ **Ethical culture and effective leadership.**
- ❖ **Performance and value creation in a sustainable manner.**
- ❖ **Adequate and effective controls.**
- ❖ **Trust, good reputation and legitimacy.**

Conclusions(ctd.)

- ❖ Finally, I leave you with these words:

We have to do our best not to forget what we have passed through in this Council and hold tight to the positive changes in Corporate Governance.

- ❖ Factors that will guarantee success in Corporate Governance practices are:

- **The right people.**
- **The right mindset.**
- **The right skills.**

Questions and Comments





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Thank You