

# WHAT YOU NEED TO KNOW ABOUT THE NIGERIAN CODE OF CORPORATE GOVERNANCE, 2018



On 15th January 2019, the Minister for Trade and Investment, Mr. Okechukwu Enelamah issued the Regulation on the Adoption and Compliance with Nigerian Code of Corporate Governance, 2018. The NCCG Regulation unveiled the Nigerian Code of Corporate Governance, 2018 (the “NCCG 2018”) which had earlier been approved by the Financial Reporting Council of Nigeria (“FRCN”).

The NCCG Regulation states that the entities listed therein must adopt and comply with the NCCG. The affected entities are:

1. all public companies (listed and unlisted);
2. all private companies that are holding companies of listed companies or other regulated entities;
3. all concessioned or privatised companies; and
4. all regulated private companies, that is to say, private companies that file returns with any regulator other than the Corporate Affairs Commission and the Federal Inland Revenue Service.

These entities are required to include in their annual reports for the financial years ending after 1st January 2020, a report (in the form and manner prescribed by the FRCN) on their compliance with the NCCG.

## What You Need to Know

1. Prior to the launch of the NCCG, several sector-specific codes of corporate governance had been introduced by the relevant regulators in the telecommunications, financial services, pensions and insurance industries. In addition to these, the Securities and Exchange Commission had introduced The Code of Corporate Governance for Public Companies in Nigeria, 2011. None of these earlier codes, however, have an overarching

application across all sectors and all types of corporate entities. The NCCG fills this void and seeks to institutionalise high corporate governance standards in all Nigerian companies, beginning with the entities listed in the NCCG Regulation.

2. The NCCG adopts a principle-based approach and prescribes that companies should adopt the “Apply and Explain” approach in their reporting compliance with the NCCG. What this means is that companies are not only required to comply with the NCCG but must also be able to explain and demonstrate the steps taken to achieve compliance.
3. The NCCG contains twenty-eight key principles that focus on the following areas:
  - Board of Directors and Officers of the Board;
  - Assurance;
  - Relationship with Shareholders;
  - Business Conduct and Ethics;
  - Sustainability; and
  - Transparency.

## Board of Directors and Officers of the Board

1. Unlike other codes, the NCCG does not prescribe a minimum or maximum board size. Rather, the NCCG emphasises having a sufficient number of directors for the size and business undertakings of the company.
2. The NCCG recognises that experience and gender are societal factors which every company must bear in mind when selecting their boards, but they must ensure that they do not compromise competence and integrity. Companies should consider an appropriate mix of knowledge, skills and experience in making appointments to their boards of directors (“the Board”).
3. Where a former managing director is to be

appointed as chairman of the board, the NCCG recommends a 'cool-off' period of three years before such an appointment.

4. The NCCG also states that it is desirable that most of the non-executive directors (“NEDs”) be independent. This practice is new to Nigeria corporate governance because NEDs typically represent the interest of shareholders, and the existing codes required only one Independent NED (“INED”) (except for the CBN code which requires that banks must have two INEDs).
5. The NCCG extensively outlines the qualifications of INEDs, which are quite similar to the qualifications prescribed by some of the existing codes of corporate governance, with minor modifications. The NCCG has, however, introduced additional qualifications, which include, amongst others:
  - a) A NED who holds more than 0.01% of the paid-up capital of the company is disqualified from being appointed as an INED;
  - b) A prospective INED should not have participated in the company's share option or performance pay scheme, nor should he be a member of the company's pension scheme;
  - c) An INED must not have served at directorate level or above at the Company's regulator within the last three years; and
  - d) An INED should not receive additional remuneration from the Company apart from Director's fee and allowances.
6. The Board is required to confirm the independence of each INED annually. INEDs are also not expected to exceed a tenure of three terms of three years each.
7. Board Committees –
  - o The recommended composition of a board committee is a minimum of three members.
  - o The Chairman of the Board should not be a member of any committee of the Board.
  - o Neither the MD/ CEO nor any of the EDs should be members of the following committees: Nomination and Governance, Remuneration, and Audit.
  - o Private companies should have audit committees comprising only NEDs, a majority of whom should be INEDs.
8. The NCCG recommends that an evaluation of the corporate governance practices of the Board by an independent external

consultant be carried out annually.

9. Remuneration of Executive Directors (“EDs”)
  - o With regard to the remuneration of the MD/CEO and EDs, companies should adopt a structure that connects reward to corporate and individual performances and include a significant component related to long-term corporate performance, such as stock options and bonuses.
  - o The NCCG has introduced a claw-back policy that allows companies to recover excess or undeserved reward from Directors and senior employees. Instances where the claw-back may be triggered include where the performance on which the reward was based is later found to be false, misleading, a regulatory infraction, constitutes fraud, or is a violation of any of the company's policies.
  - o Companies are discouraged from awarding NEDs performance bonuses, as this may compromise their objectivity.

### Assurances

1. Principles 17 to 20 of the NCCG focus on risk management and effective internal control mechanisms. The Board should establish a sound framework for providing assurances to the Board on the effectiveness of their approach to governance. The risk management framework should be communicated in simple and unambiguous language.
2. A thorough risk assessment covering all aspects of the Company's business is to be carried out annually or more often in companies with complex operations.
3. Internal Audit
  - o The head of internal audit is required to report directly to the audit committee while having a line of communication with the MD/ CEO and should have unrestricted access to the chairman of the audit committee as well as the Chairman of the Board.
  - o There should be an external assessment of the effectiveness of the internal audit function at least once every three years by a qualified independent reviewer to be appointed by the Board.
  - o The evaluation of the head of the internal audit function should be performed by the audit committee.

The head of internal audit may only be removed by the Board on the recommendation of the audit committee.

#### 4. External Auditors

- o External audit firms may not be retained for longer than 10 years. Thereafter, they may only be considered for reappointment after a 'cooling period' of 7 years.
- o Where an external auditor has already served for up to 10 years as at the date of commencement of the NCCG, the appointment of such an auditor shall terminate at the Annual General Meeting to be held immediately after the NCCG came into effect.
- o In order to preserve independence, the engagement partner at the external audit firm must be changed every five years. Where any such engagement partner retires from the external audit firm, the partner should not be appointed to the Board of the company until an appropriate cooling-off period of not less than three years has been observed.
- o Similarly, there should be a cooling-off period before a company can engage any member of the audit team of the external auditor as a member of the company's financial reporting team.

#### 5. Whistle blowing

- o The Board should establish a whistle-blowing framework to encourage stakeholders to bring unethical conduct and violations of laws and regulations to the attention of an internal and/ or external authority, so that action can be taken to verify the allegation and apply appropriate sanctions or take remedial action to correct any harm done.
- o The Board should ensure that no whistle-blower is subject to any detriment on the grounds that he/she has made a disclosure. A whistle-blower who has suffered any detriment by reason of disclosure may be entitled to compensation and/or reinstatement as appropriate.

### Relationship with Shareholders

1. In line with principles 21 to 23 of the NCCG, effective stakeholder dialogue at general meetings is encouraged to promote greater shareholder participation in the affairs of the company.
2. The Board should develop a policy that

ensures appropriate engagement with shareholders. The policy should be available on the website of the company.

3. No shareholder, however large its shareholding and notwithstanding that it might be an institutional shareholder, should be given preferential treatment or superior access to information or other materials.
4. The Board should ensure that all shareholders understand the ownership structure of the Company and should make available current information on the ultimate beneficial owners of the major shareholdings or any shareholders owning, controlling or influencing 5% or more of the company's shares.

### Business Conduct and Ethics

1. Principles 24 and 25 of the NCCG highlight the importance of maintaining professional business and ethical standards. The Board should model a top-down commitment to keeping these standards by formulating a Code of Business Conduct and Ethics that will be reviewed periodically.
2. Companies should establish policies for monitoring insider trading, related party transactions, conflicts of interest and other corrupt practices in order to promote ethical conduct and to mitigate the adverse effects of non-compliance with ethical standards.

### Sustainability

1. In order to ensure successful long-term business performance and also to project the company as a responsible corporate citizen contributing to economic development, Principle 26 of the NCCG requires companies to pay adequate attention to sustainability issues, including environmental, social, occupational and community health and safety hazards. The Board is required to establish policies on these issues.
2. The policies should include, among other things:
  - o the company's business principles, practices and efforts towards achieving sustainability;
  - o the management of safety issues including workplace accidents, fatalities, occupational and safety hazards;
  - o minimising the environmental impact of the company's operations;
  - o the nature and extent of employment equity and gender diversity within the company;
  - o training initiatives;
  - o opportunities created for physically challenged persons or disadvantaged

- o individuals; and
- o environmental, social and governance principles and practices of the company.

corporate governance report that provides clear information on the company's governance structures, policies and practices as well as environmental and social risks and opportunities.

## Transparency

1. Disclosures and communication are essential factors for achieving transparency in business practices. Principles 27 and 28 require companies to interact with their shareholders with a view to keeping stakeholders informed of the activities of the company so that they can make informed decisions.
2. In addition to the specific disclosures outlined in the NCCG, the Board is required to use its best judgment to disclose any matter which, though not specifically required to be disclosed by the NCCG, in the opinion of the Board, is capable of affecting the present or anticipated financial condition of the company or its status as a going concern.
3. Every board should adopt and implement a stakeholder management and communication policy and is required to ensure that reports and other communication issued to stakeholders are written or made in clear and easily understood language and are made available on the Company's web portal.

5. This means that companies will be required to disclose the extent of their compliance with the principles of the NCCG in their 2019 annual report. Companies will, therefore, need to begin to take steps to comply with the NCCG.

## Conclusion

The introduction of the NCCG is commendable and reflects a positive step towards elevating corporate governance standards in Nigeria. It is hoped that the implementation of the NCCG will improve investors' and stakeholders' confidence in Nigerian companies.

The status of the NCCG vis-à-vis the existing sector-specific codes in the event of a conflict is, however, unclear. This is because, the NCCG does not explicitly state the order of priority in the case of a conflict between the provisions of the NCCG and other sector-specific codes.

Having said this, Nigeria's corporate sector continues to demonstrate a willingness to improve corporate governance standards and it is our expectation that the NCCG will assist companies to develop and implement these minimum best practices standards.

## Compliance

1. The NCCG does not impose any penalties for non-compliance with its provisions, however, the introductory section of the NCCG states that the implementation of the NCCG will be monitored by the FRCN through the various sectoral regulators and registered exchanges who are empowered to impose appropriate sanctions for deviations from the NCCG provisions.
2. In addition, the FRCN may review the implementation of the NCCG where deviations from the NCCG recur. The FRCN reserves the right to apply "other monitoring mechanisms" based on its review of the level of implementation of the NCCG.
3. Furthermore, the introduction to the NCCG also states that the FRCN will, in collaboration with the relevant regulatory agencies, subsequently issue corporate governance guidelines to assist with the implementation of the NCCG as may be required to respond to prudential considerations in the different sectors of the economy.
4. The board should ensure that the company's annual report includes a

## How can UUBO help?

Udo Udoma & Belo-Osagie has a robust corporate advisory team and a well-established company secretarial arm, Alsec Nominees Limited ("Alsec"). Together, we offer our clients practical solutions to legal issues, ensuring that they comply with their legal and regulatory obligations.

We are able to advise clients on how to ensure that they comply with the NCCG; prepare the various policies that companies are required to implement pursuant to the NCCG and other sector-specific corporate governance codes, and assist companies to prepare the corporate governance report that is to be incorporated into the annual report to shareholders.

Alsec supports the boards of companies we provide company secretarial services to and chairmen of such companies, in particular, in ensuring compliance with the provisions of the Companies and Allied Matters Act (Cap C20) LFN 2004, relevant codes of corporate governance. Alsec has the competence and capability to advice on compliance with the NCCG.

For more information about our Corporate Advisory services and how we may support you, please visit [www.uubo.org](http://www.uubo.org) and email us at [info@uubo.org](mailto:info@uubo.org) and [uubo@uubo.org](mailto:uubo@uubo.org).