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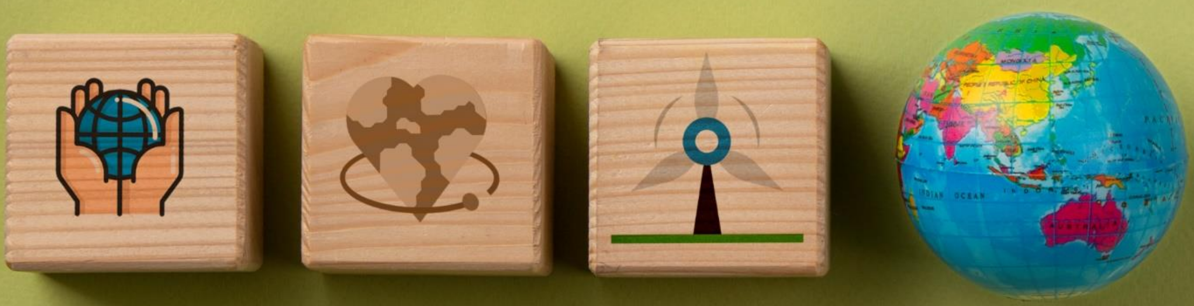

# A Review of ESG Responsibilities of Corporate Entities in Nigeria

## INTRODUCTION

In today's world, Environmental, Social and Governance ("**ESG**") considerations have become a global set of guiding principles for evaluating and improving corporate sustainability and impactful decision-making.  ESG integrates ethical considerations into a company's operations with the aim of balancing profitability and corporate responsibility.  It emphasises that businesses must not only deliver returns to investors but also contribute positively to various stakeholders, including the environment, employees, communities, customers, suppliers, and government.

Overall, ESG considerations affect multiple facets of corporate administration, reflecting a broader commitment to sustainability, responsible business practices, and ethical conduct in today's corporate landscape.  In the Nigerian business environment, the significance of ESG factors continues to increase, necessitating adherence to ESG considerations in business operations.  For example, in the energy and finance sectors, investors are placing greater emphasis on investing in companies with robust ESG practices, and there is a growing need for companies to invest in community development initiatives and promote equitable labour practices to align with evolving stakeholder expectations.  Therefore, understanding and adopting a sustainable ESG framework has become increasingly important for corporate entities.

In this article, we examine the significance of ESG, identify various ESG considerations for corporate entities in Nigeria, and recommend a roadmap for ESG compliance.

## THE GROWING IMPORTANCE OF ESG

Understanding the significance of ESG is critical to adopting and implementing ESG principles in an organisation.  ESG is important for several reasons, including:

1. **Risk mitigation and business sustainability:** ESG implementation helps mitigate risks by identifying and addressing environmental, social and governance factors such as climate change impacts, labour rights violations, corruption and bribery risks, diversity and inclusion practices, and regulatory compliance issues that could potentially impact a company's operations, finances, and reputation.  Businesses can bolster their resilience and sustainability by effectively managing these risks, thus minimising potential adverse impacts on their long-term success.

2. **Investment considerations and opportunities:** We have seen an increasing demand by investors to assess a target's ESG behaviour as part of the due diligence process prior to investment. Failure to align with ESG objectives may limit a company's investment prospects, as they may represent valid concerns for investors. As a result, organisations that prioritise ESG in their operations will not only attract traditional investment, but, in an increasingly sustainability-conscious world, will also secure sustainable financing from socially responsible investors aiming to align their financial goals with broader environmental and social objectives.

3. **Stakeholder expectations:** Stakeholders include customers, employees, investors, suppliers, communities, and regulatory bodies, each harbouring distinct expectations regarding organisational operations. By incorporating ESG principles into their practices, organisations can demonstrate their commitment to comprehensively addressing stakeholder expectations.

4. **Regulatory compliance:** Adhering to ESG regulations helps mitigate legal risks and shield organisations from potential fines, penalties, and reputational damage linked with non-compliance. By staying informed about regulatory requirements and proactively integrating ESG considerations into their operations, organisations can minimise legal uncertainties.

5. **Environmental and climate-related considerations:** By acknowledging the environmental impact of their activities and the associated risks, organisations can mitigate potential harm to the ecosystem, diminish their carbon footprint, and contribute to overall environmental sustainability.

6. **Enhanced reputation and brand value:** Prioritising ESG principles enables organisations to build trust and credibility with their stakeholders and the public, resulting in a positive reputation within the relevant markets.

7. **Attraction and retention of talent:** The social aspect of ESG emphasises employee welfare, which enables organisations to attract and retain top talent by showcasing a commitment to employee well-being, diversity, equity, and inclusion.

## NIGERIAN LAW AND ESG

Under Nigerian law, ESG implementation is not mandatory for all Nigerian companies. Some laws, however, impose duties on corporate organisations to consider ESG in their decision-making.

**1. Environmental Responsibilities**

These include responsibilities aimed at minimising negative environmental impact, conserving natural resources, and promoting ecological sustainability. Some environmental expectations that organisations should implement include:

**a. Environmentally Conscious Decision-Making:**

i. **Companies and Allied Matters Act 2020:** Section 305(3) imposes a duty on the directors of a company to consider the environmental impact of their company's operations within the community where it conducts business. While this provision does not prescribe specific obligations regarding ESG practices, it empowers the board of directors to determine the most effective means of fulfilling this obligation. Subsection 8 of this section reinforces the importance of this duty by stipulating that directors must prioritise it, emphasising that any breach of this duty renders them liable for resulting liabilities.

ii. **Environmental Impact Assessment Act 1992:** Section 2 requires that public and private projects with the potential to impact the environment significantly undergo a thorough environmental impact assessment ("**EIA**") before being authorised or initiated. This assessment, conducted by approved consultants, evaluates the project's potential environmental effects. A detailed EIA report is submitted to the National Environmental Standards and Regulations Enforcement ("**NESREA**") after the assessment. The NESREA will issue certificates only after reviewing the EIA report, ensuring that projects adhere to environmental standards. As the governing agency, NESREA plays a pivotal role in safeguarding environmentally sound practices within commercial activities.

iii. **Water Resources Act 1993**: This law regulates activities affecting water sources and water usage. It regulates specific activities concerning water bodies and stipulates that licences must be secured from the Minister of Water Resources for any endeavours that could potentially impact the quantity or quality of water resources. By requiring authorisation for such activities, the law aims to mitigate any adverse effects on water resources while promoting their long-term preservation and environmental health.

b. **Carbon Footprint Control:**

Organisations are obligated to mitigate their environmental impact by limiting carbon emissions. Embracing sustainable practices and technologies not only reduces the carbon footprint but also signifies a commitment to fostering a healthier environment. By proactively controlling their carbon footprint, organisations contribute to a greener future while enhancing their overall ESG performance and reputation. In particular:

i. under the Climate Change Act 2021 ("**CCA**"), organisations are required to achieve low greenhouse gas emissions, including green growth and sustainable economic development, by adhering to the carbon budget[1] as specified by the Federal Ministries of Environment and National Planning ("**FMENP**"). Additionally, the CCA empowers the National Council on Climate Change to work with the Federal Inland Revenue Service to devise an effective framework for levying a carbon tax. This tax helps to discourage carbon emissions by holding carbon fuel users accountable for environmental and economic damages while generating revenue for government investment in clean energy transition.

ii. pursuant to the Harmful Waste (Special Criminal Provisions, etc) Act 1988, organisations are required to properly transit, convey, dispose, or retain harmful waste.

iii. under the Petroleum Industry Act 2021, organisations must take responsibility for the environmental and social sustainability of their host communities, with regard to oil and gas corporations.

c. **Sustainable Finance Practices:**

Sustainable finance practices encompass various strategies, including responsible investing, green financing, and compliance with best practices to maintain ethical standards. The Central Bank of Nigeria ("**CBN**") and the Securities and Exchange Commission ("**SEC**"), in separate regulations, have underscored the importance of financial institutions adopting sustainable practices.

[1] The carbon budget defines the permissible amount of greenhouse gas emissions within a specified timeframe. The carbon budget may be revised periodically by the FMENP to align with Nigeria's Nationally Determined Contributions, ensuring compliance with international commitments.


The CBN issued the Nigerian Sustainable Banking Principles on September 24, 2012 (the "**Sustainable Banking Principles**"). The primary objective of this regulation is to drive positive development outcomes for society while safeguarding the environment and communities impacted by the institutions' operations, thus promoting sustainability. The Sustainable Banking Principles apply to all banks, discount houses, and development financial institutions, necessitating the adoption of principles and guidelines aimed at fostering a sustainable approach to mitigate risks arising from business activities.

Similarly, the SEC released the Nigerian Sustainable Finance Principles in April 2021 (the "**Sustainable Finance Principles**"). The Sustainable Finance Principles are designed to advance environmental conservation, social advancement, and economic sustainability. These principle-based guidelines direct regulated entities, comprising self-regulated organisations, capital market operators, trade groups, and capital trade points, to embed ESG considerations into their operational frameworks and decision-making procedures. Regulated entities must report on their advancements in implementing ESG principles and ensure that the organisations they oversee and/or finance disclose relevant information concerning their ESG endeavours.

Beyond regulations, regulators have also launched initiatives in partnership with key market players. In 2018, the FMDQ Securities Exchange launched the Nigerian Green Bond Market Development Programme in collaboration with the Climate Bonds Initiative and the Financial Sector Deepening Africa. The funds raised through green bond issuances primarily support projects with evident environmental benefits.

Similarly, in partnership with the Convention for Business Integrity, the Nigerian Exchange Limited ("**NGX**") introduced its Corporate Governance Rating System ("**CGRS**") for listed companies in Nigeria in 2014. The CGRS evaluates companies based on four key criteria:

i. corporate integrity;
ii. adherence to governance regulations (including NGX regulations, SEC Corporate Governance Guidelines and the Companies and Allied Matters Act, 2020, along with industry-specific rules);
iii. director certification;
iv. and expert stakeholders' confirmation of a company's integrity.


Over time, these ratings are anticipated to further elevate corporate governance standards in Nigeria, challenging the prevailing notion of pervasive corruption within Nigerian companies and fostering increased investor confidence.

## 2. Social Responsibilities

Social responsibilities encompass employee welfare, community engagement and diversity efforts. It also involves an assessment of an organisation's social impact on its community. Some social responsibilities that organisations should implement include:

### a. Employee Benefits:

Ensuring fair compensation, promoting a healthy work-life balance, building an ESG-conscious workplace and creating opportunities for professional growth and development are crucial components of corporate sustainability goals. Recognising the importance of employee benefits as an ESG obligation underscores a commitment to ethical business practices and reinforces the value of investing in human capital for long-term success. Several laws enforce employee benefits, including:

i. The Factories Act 1987 imposes mandatory obligations concerning the health, safety, and welfare of factory workers. Part II of this Act lists obligations relating to cleanliness, overcrowding, provision of sanitary conveniences, and ensuring the safety of machinery.




ii. The Employees Compensation Act 2010 provides equitable compensation in cases of death, injury, disease, or disability occurring during employment. This Act also facilitates the rehabilitation of employees with work-related disabilities and oversees the operation of a compensation fund managed in the best interests of both employees and employers.

iii. The National Housing Fund Act 1992 deals with the provision of affordable housing using contributions from Nigerians in both the public and private sectors, as well as investments from institutional investors such as commercial and merchant banks and insurance companies.

iv. The National Health Insurance Authority Act 2022 provides access to affordable healthcare as mandated by the National Health Insurance Scheme.

v. The Pension Reform Act 2014 creates the contributory pension scheme for employers with more than 3 (three) employees, thereby securing a life after retirement for the employees.

vi. The Industrial Training Fund Act 2011 promotes skill acquisition in industry and commerce and encourages management skill training for technical and entrepreneurial development.

**b. Consumer Protection:**

This involves providing high-quality products and services, prioritising consumer safety and satisfaction, and promoting transparency and accountability in marketing and sales practices. Organisations demonstrate a commitment to ethical conduct, customer trust, and long-term sustainability by fulfilling this obligation and, in turn, foster brand loyalty and enhance the organisation's reputation. In Nigeria, organisations are obligated to uphold consumer rights; the Federal Competition and Consumer Act 2018 aligns with this ESG goal by prioritising the protection and promotion of consumers' interests and welfare as one of its primary objectives. It imposes obligations on manufacturers, importers, distributors, and suppliers of goods and services while also enforcing sanctions for any breaches of these obligations[2].

[2] Sections 1, 2, 114, 115, 124, 131, 134, and 135 of the Federal Competition and Consumer Act 2018.




3. **Governance Responsibilities**

This entails upholding responsible corporate administration and conduct through various principles and practices that prioritise accountability and transparency to encourage ethical decision-making within organisations. These responsibilities are contained in the Nigerian Code of Corporate Governance 2018 ("**NCCG"**) and the Nigeria Stock Exchange Sustainability Disclosure Guidelines 2018 ("**NGX Guidelines**"). Key governance responsibilities have been summarised below.

**a.** The NCCG provides 28 broad principles that apply to all public companies (listed and unlisted), all private companies that are holding companies of listed companies or other regulated entities, all concessioned or privatised companies and all other regulated private companies. All companies are, however, encouraged to apply the NCCG as the standard of best practices. It encourages the development of policies on the board of directors and officers, assurance, shareholder relations, ethical business practices, and sustainability concerns encompassing the environment, social aspects, occupational health, community welfare, safety measures, and transparency. Each principle is supplemented with recommended guidelines for effective implementation.

**b.** The NGX Guidelines outline reporting structures for ESG performance by listed companies. It includes a detailed approach that should be adopted towards ensuring sustainability in organisations and mandates tracking of the companies that make such disclosures. They outline a strategic process for integrating sustainability, which involves identifying key organisational issues and drivers, formulating strategies, establishing governance and stability mechanisms, setting targets and action plans, monitoring progress, and reporting and evaluating advancements. Additionally, the NGX Guidelines impose reporting obligations on listed companies.

## ROADMAP TO ESG COMPLIANCE

Successful ESG integration for corporate entities in Nigeria requires more than just lip service. In order to successfully integrate ESG principles into the fabric of corporate entities, it must be intentional, holistic and systematic so that it permeates every aspect of the corporate landscape. Organisations must be deliberate in choosing the right ESG strategy tailored to its specific goals. Some practical steps that organisations can take to create a framework that promotes sustainability include:




1. conducting an ESG assessment to identify the gaps in the company's sustainability framework and understand the current ESG landscape;

2. designing an ESG model with clear policies, action plans and targets to address the gaps and provide a path to sustainability;

3. establishing a timeframe for periodic assessments to ensure the organisation is on the right ESG track;

4. facilitating frequent ESG training for members of staff to create awareness and build capacity; and

5. creating assessment criteria for effectively tracking the ESG progress of the organisation against the relevant ESG model.

## CONCLUSION

While Nigeria has taken strides in acknowledging and incorporating ESG considerations into the operations and minds of corporate entities, we are yet to achieve significant milestones towards imbibing global standards of ESG compliance. This may be partly because ESG practices remain largely voluntary in Nigeria. There is an increasingly strong argument that integrating ESG principles into business strategies is no longer optional and must be regarded as imperative in today's dynamic economic environment. In addition to unlocking opportunities in new markets and funding avenues, ESG principles bring companies into alignment with the global push towards sustainability, which bolsters their competitive edge, attracts investment, and contributes to sustainable development within the nation.

As Nigeria continues its journey towards greater ESG integration, it has the potential to emerge as a beacon of sustainable business practices, driving progress and prosperity for all stakeholders across the region and the continent.

*This publication has been authored by the General Corporate Advisory team of Udo Udoma & Belo-Osagie. For more information about our General Corporate Advisory offerings, please visit our website at www.uubo.org or email us at uubo@uubo.org.*

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