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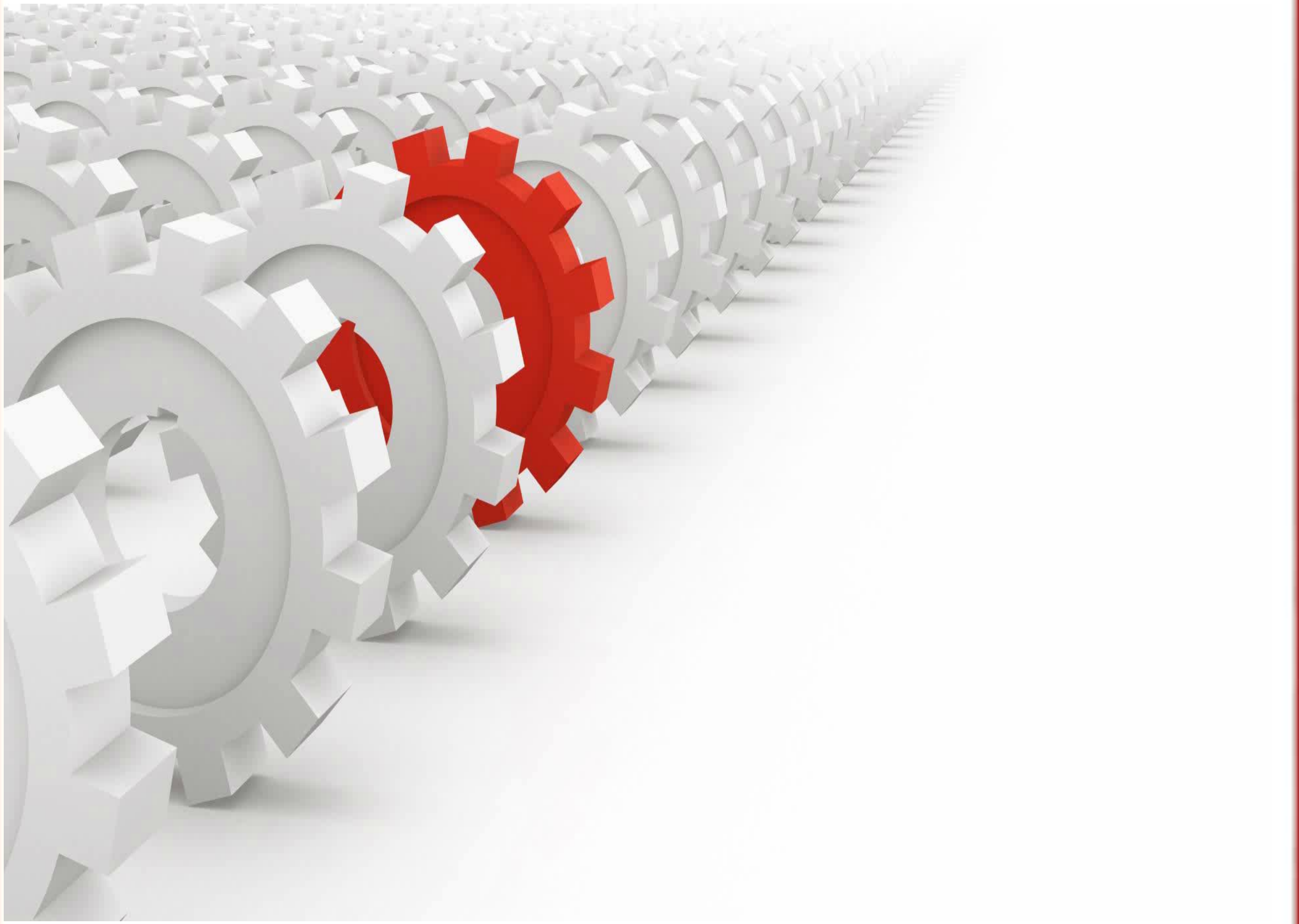

Corporate Governance Best Practices – An International Perspective

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June, 2022

Outline

- ❑ Introduction
- ❑ Overview of different Corporate Governance Codes
- ❑ Need for a uniform Corporate Governance Code
- ❑ Global trends in Corporate Governance

Introduction

- Corporate governance codes can encourage … commitment to good corporate governance and aspirations towards higher standards.
- They can provide guidance for financial and nonfinancial disclosure, stakeholder relations and foster better engagement of minority shareholders. They also can help clarify the roles of managers and directors.
- The codes can be found in more than 140 countries worldwide

…IFC

Theories that underpin Corporate Governance Codes

Various theories of corporate governance underpin the different codes including:

A. **Agency Theory**, where the central premise is that shareholders and managers have different objectives and different access to firm-specific information. Self-interested managers as agents of shareholders (principals) have the opportunity to take actions that benefit themselves, and shareholders are those that bear the costs of such actions (i.e. agency costs).

B. Transaction Cost Economics Theory, looks at the company as governance structure.

C. **Stakeholder Theory** looks at the relationship between the company and its various stakeholders like employees.

D. **Stewardship Theory** which focuses on the moral duty of directors/managers to act as "stewards" of the company as they execute their "fiduciary duties."

Corporate Governance in South Africa

Applicable CG Codes and Governance Reports in SA

- Post democratic South Africa, the prevalent of King reports have centrally defined corporate governance principles.

- These are King I (1992), King II (2002), King III (2010), and the latest one being King IV. These reports are known for attracting institutional investors, although often criticised for insisting on having a local partner to their share structure.

- The governance usually includes unitary board’s structure, dispersed ownership structure, outsider system ownership and control structures.

Corporate Governance in South Africa

Strengths & Weaknesses in SA Corporate Governance

South Africa’s King Reports, highlight corporate governance and the **interests of shareholders and various stakeholders.**

Cultural diversities, gender representation and minority group presentations in Board are contentious issues, some scholars arguing that it has an effect in good corporate governance.

South Africa comes from a history of segregation, thus corporate CG codes are **designed to redress these past disparities**, although not without difficulty.

Diversity is one of the greatest strengths which contribute effectively to good and sound decision-making, reflective of all people. Thus, women representations in Boards is seen as an important consideration.

Corporate Governance in Nigeria

Nigeria Code of Corporate Governance 2018 (NCGC)

The NCGC 2018 seeks to:

- **institutionalize corporate governance best practices** in Nigerian companies thereby **rebuilding public trust and confidence** in the Nigerian economy, thus **facilitating increased trade and investment**.

- **Promote public awareness of essential corporate values and ethical practices** that will **enhance the integrity of the business environment**. Companies with **effective boards/competent management** that **act with integrity** and are **engaged with shareholders and other stakeholders** are better placed to achieve their business goals and contribute positively to society.

- Ensure that the **interests of the Board and management are aligned with those of the shareholders and other stakeholders**. By adhering to the principles articulated in this Code, companies will demonstrate a commitment to good governance practices and increase their levels of **transparency, trust** and integrity, and **create an environment for sustainable business** operations.

Corporate Governance in Nigeria

NCGC 2018 - Code Philosophy

The Code is **aimed at companies of varying sizes and complexities across industries**. Consequently, flexibility – the ability to apply the Code in a wide range of circumstances, and scalability – the ability to apply to companies of differing sizes, are of utmost importance for successful implementation.

Accordingly, the Code adopts a **principle-based approach** in specifying minimum standards of practice that companies should adopt. Where so required, companies should adopt the “**Apply and Explain”** approach in reporting on compliance with this Code.

The ‘**Apply and Explain**’ approach which assumes **application of all principles** and requires entities to explain how the principles are applied. The Code has **7 Principles and 28 Recommended Practices**

Monitoring the Implementation of NCGC 2018 in Nigeria

- The implementation of this Code will be monitored by the **Financial Reporting Council of Nigeria (FRC)** 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.

- 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.

- **In consonance with the relevant regulatory agencies of the Federal Government of Nigeria, the Council will subsequently issue corporate governance guidelines to assist implementation as may be required to respond to prudential considerations in different sectors of the economy.**

Corporate Governance in Nigeria

CBN Code of Corporate Governance for MFBs 2018

Preface:

"In view of the importance of micro and small enterprises to the growth of an economy, the ***Central Bank of Nigeria (CBN)*** *in 2005 introduced the* ***Microfinance Policy and Regulatory Framework*** *to support the development of the sub-sector. However, by 2014, some of the licensed Microfinance Banks (MFBs) had become insolvent, a development largely attributed to poor governance practices and gross insider abuses."*

To strengthen corporate governance practices in MFBs in Nigeria, the CBN, pursuant to the provisions of Section 2(d) of the CBN Act 2007 and Section 57 of the Banks and Other Financial Institutions Act (BOFIA) CAP B3 LFN 2004, issued this Code of Corporate Governance for Microfinance Banks in Nigeria (CGMFB).

"The objectives of the CGMFB are to:

a) Define minimum acceptable corporate governance standards for all licensed MFBs in Nigeria;

b) Promote high ethical standards among operators; and

c) Enhance public confidence in MFBs in Nigeria"

Corporate Governance in Nigeria
Key Sections of CGMFB 2018

Separation of Powers

2.3 Separation of Powers

2.3.1 The positions of the Board Chairman and the MD/CEO shall be separate. No one person shall combine the two positions in any MFB at the same time. For the avoidance of doubt, no executive Vice Chairman shall be allowed in the Board structure.

2.3.2 Not more than two members of a family shall be on the board of an MFB at the same time. The expression 'family' includes director’s spouse, parents, children, siblings, cousins, uncles, aunts, nephews, nieces and in-laws.

2.3.3 Where the MFB is a member of a holding company, not more than two family members shall be allowed to serve on the Boards of the MFB and the holding company.

2.3.4 No two members of a family shall occupy the positions of Chairman and MD/CEO or Executive Director of the MFB and Chairman or MD/CEO of an MFB’s subsidiary at the same time.

Key Sections of CGMFB 2018

2.1 Responsibilities of the Board

2.1.1 The Board shall be accountable and responsible for the performance and affairs of the MFB. Directors owe the MFB the duty of care and loyalty to act in the interest of the MFB's shareholders and other stakeholders.

2.1.2 Members of the Board are severally and jointly liable for the activities of the MFB.

2.1.3 The Board shall define and document the MFB's strategic goals, approve its long and short-term business strategies and monitor their implementation by management.

2.1.4 The Board shall determine the skills, knowledge and experience that members require which shall, at the minimum, be in line with the requirements of the Approved Persons Regime.

2.1.5 The Board shall ensure that its human, material and financial resources are effectively deployed towards the attainment of set goals of the MFB.

Key Sections of CGMFB 2018

2.1 Responsibilities of the Board

- 2.1.6 The Board shall appoint the CEO as well as top management staff and establish a framework for delegation of authority in the MFB, which shall comply with extant regulations issued by the CBN from time to time.

- 2.1.7 The Board shall establish and monitor agreed performance targets for the management.

- 2.1.8 The Board shall set limits of authority, specifying the threshold for large transactions which it must approve before they take place.

- 2.1.9 The Board shall ensure that a succession plan is in place for the MD/CEO for Unit MFBs; and MD/CEO and executive directors for state and National MFBs.

- 2.1.10 The Board shall consider, approve and monitor the implementation of the MFB's budget, including setting expenditure limits for management and Board Committees.

Key Sections of CGMFB 2018

2.1 Responsibilities of the Board

- 2.1.11 The Board shall approve credit facilities in line with the approved limits of authority of the MFB.

- 2.1.12 The Board shall ensure strict adherence to the Code of Conduct for Directors of Banks and Other Financial Institutions in Nigeria.

Key Sections of CGMFB 2018

2.2 Composition and Size of the Board

2.2.1/2 The minimum and maximum number of Directors on the boards of MFBs shall be five (5) and seven (7) for Unit MFBs; five (5) and nine (9) for State MFBs; and seven (7) and twelve (12) for National MFBs, respectively. The MD/CEO shall be the only Executive Director of a Unit MFB.

2.2.3 Members of the Board shall be persons of proven integrity and shall meet the requirements of the Revised Assessment Criteria for Approved Persons' Regime for financial institutions. At least two (2) members of the Board of Directors other than the Executive Directors shall be required to have banking or related financial industry experience.

2.2.4 The Board shall consist of Executive and Non-Executive Directors with NED's being more.]

2.2.5 The Board of MFBs shall consist of a minimum of one (1) (INED) for Unit MFBs and state MFBs and two (2) for National MFBs. State MFBs with a Board size of more than 7 members shall be required to have a minimum of two (2) INEDs.
An Independent Director is a member of the Board of Directors who has no direct material relationship with the MFB or any of its officers, major shareholders, subsidiaries and affiliates.

Key Sections of CGMFB 2018

Board Committees

2.5.1 The Board shall at the minimum, establish the following Committees:
a) Risk Management Committee
b) Audit Committee
c) Board Governance and Nominations Committee
d) Board Credit Committee

The functions of Risk Management and Audit may be carried out by one committee for a Unit or State MFB. This is without prejudice to the requirements of CAMA 1990 (as amended) on the Statutory Audit Committee which is not a Board Committee.

Each MFB shall have a Risk Officer and Internal Auditor who shall report directly to the Committee(s) responsible for Risk Management and Audit function(s) respectively.

2.5.2 Where there is a Remuneration Committee in addition to the four Committees prescribed in Section 2.5.1, the membership shall comprise NEDs only. Where both Committees (Remuneration Committee and Governance & Nominations Committee) are combined, its membership shall be drawn only from NEDs.

2.5.3 The Remuneration Committee shall determine the remuneration of Executive Directors and management.

Key Sections of CGMFB 2018

Board Committees

2.5.4 The Board and its Committees shall each have a charter to be approved by the CBN. The charters shall be reviewed every three (3) years or as may be determined by the CBN from time to time. 8

2.5.5 The Chairman of the Board shall not be a member of any Board Committee.

2.5.6 All Board Committees shall be headed by Non-Executive Directors (NEDs).

2.5.7 The Board Audit Committee (BAC) shall have unrestricted access to the financial records of the bank including external auditors' reports.

2.5.8 The MD/CEO and other Executive Directors (EDs) shall not be members of the BAC.

2.5.9 The Board Credit Committee shall comprise members knowledgeable in credit analysis.

2.5.10 The Board shall not replace members of the BAC and External Auditors at the same time.

Key Sections of CGMFB 2018

8.0 COMPLIANCE

8.1 All MFBs shall comply with the provisions of this Code. External auditors of MFBs shall report annually to the CBN, the extent of the MFB’s compliance with the provisions of this Code.

8.2 Returns on the status of each institution’s compliance with this code shall be rendered to the CBN semi-annually (30th June and 31st December every year) or as may be specified by the CBN from time to time.

The returns shall be addressed and submitted to the Director, Other Financial Institutions Supervision Department not later than 2 weeks after the end of the relevant reporting period.

Key Sections of CGMFB 2018

9.0 SANCTIONS

Failure to comply with the Code will attract appropriate sanctions in accordance with section 64 BOFIA Cap B3 Laws of the Federation of Nigeria (LFN) 2004 or as may be specified in any applicable legislation or regulation.

10.0 EFFECTIVE DATE

This Code took effect from December 1, 2018.

Need for a Uniform Local Corporate Governance Code

The Nigerian Code of Corporate Governance 2018 seeks to **institutionalize and harmonize corporate governance best practices in Nigerian companies**. In recognition of the fact that one size does not fit all, the NCGC 2018 set minimum standards. FRC will work with the relevant regulators to develop sectoral guidelines, monitor compliance, enforce implementation.

In response to challenges in their respective sectors, some industry regulators had developed corporate governance codes for companies operating in their sectors:

1. CBN Code of Corporate Governance for Micro Finance Banks (2018),
2. CBN Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014/2006 issued by the Central Bank of Nigeria
3. Code of Corporate Governance for the Telecommunication Industry 2016/2014, issued by the Nigerian Communications Commission;
4. Code of Corporate Governance for Public Companies in Nigeria 2011/2003 issued by the Securities and Exchange Commission;
5. Code of Good Corporate Governance for Insurance Industry in Nigeria 2009 issued by the National Insurance Commission; and
6. Code of Corporate Governance for Licensed Pension Fund Operators 2008 issued by the National Pension Commission.

Need for a Uniform International Corporate Governance Code

In recent years, **global investors too have veered around to the view that they might have to abide by different rules {and CG codes} in different countries**. Of course, the implicit assumption here is that if the rules do not change suddenly, they are fine with separate reporting, board structures, and laws related to shareholding and equity control.

The discussion so far is whether an international code of CG is viable. **The key themes and the insights that have animated the discussion point to the fact that where there are different cultures, there tends to be diversity and hence, it is indeed the case that celebrating differences and actualizing homogeneity must go hand in hand.**

Wherever possible there can be convergence in the adoption of uniform codes of governance and the differences can coexist with the agreements. This has been the case with other multilateral bodies such as the WTO (World Trade Organization) and the United Nations, which have been somewhat successful in respecting national sovereignty amidst global cooperation and coordination.

It can be argued that *as long as the demands of global capital towards transparency and accountability being more profitable are concerned, individual differences related to local conditions can be co-opted and embraced within the ambit of an international code of corporate governance*.

Global Trends in Corporate Governance

PWC 2021

1. Environmental Social Governance (ESG) Monitoring –Climate Risk, Diversity & Inclusion)
2. Diversification of Boards
3. Human Capital Oversight (War for Talent)

Harvard Law School Forum on Corporate Governance 2021

1. Climate Change Risk
2. Diversity, Equity, Inclusion
3. Convergence of Sustainability Reporting Standards
4. Human Capital Management
5. Return of Activism & Increased Capital Mkt Activity
6. Virtual Board & Shareholder Meetings

Global Trends in Corporate Governance

Harvard Law School Forum on Corporate Governance – Predicted for 2022

1. Assertive investors willing to vote for change
2. Higher standards for climate disclosure and action
3. Enhanced board effectiveness becomes the norm
4. Further emphasis on equity, diversity, and inclusive culture initiatives at the board and corporate level

PWC – Predicted for 2022

1. Assertive investors & Shareholders demand ESG compliance
2. Human Capital Concerns take Centre Stage
3. Supply Chain disruptions continue for every sector
4. Quickly evolving data protection regulations demand nimble responses

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Questions?

Thank You

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