

**THE NIGERIAN CODE OF CORPORATE GOVERNANCE 2018: COMPLIANCE REPORTING FOR FINANCIAL YEARS ENDING AFTER 1<sup>ST</sup> JANUARY 2020**

*February 10, 2020.*

**1.0 Introduction**

On the 15<sup>th</sup> of January 2019, the Financial Reporting Council of Nigeria, pursuant to its powers under sections 11 (c) and 51 (c) of the Financial Reporting Council of Nigeria Act (the “Act”), released the Nigerian Code of Corporate Governance 2018 (the “2018 Code” or the “Code”). The aim of the 2018 Code is to institutionalise corporate governance best practices and to promote public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment in Nigeria.

Accordingly, by virtue of Section 73 of the Act, the Minister for Industry, Trade and Investment, issued the Regulation on the Adoption and Compliance with Nigerian Code of Corporate Governance, 2018 (the

“Regulation”). The Regulation provides that the Code shall apply to the following:

- a. all public companies (listed or not);
- b. all private companies that are holding companies of public companies or other regulated entities;
- c. all concessioned or privatised companies; and
- d. all regulated private entities.<sup>1</sup>

(Together, the “Relevant Entities”).

Although the 2018 Code has adopted a voluntary (“adopt and explain”) approach, it is expected that Relevant Entities shall report on the application of the Code in their annual reports for financial year ending after January 1, 2020, in the form and manner prescribed by the Financial Reporting Council of Nigeria.<sup>2</sup>

As companies prepare their annual reports for financial years ending after January 1, 2020, we have prepared a checklist to assist Relevant Entities in measuring their compliance levels across the six broad parts of the Code.

**2.0 Checklist**

<b>BROAD PARTS OF THE CODE</b>	<b>HOW HAS YOUR ENTITY ACHIEVED THE FOLLOWING?</b>
<b>BOARD DIRECTORS &amp; OFFICERS OF THE BOARD</b>	<ul style="list-style-type: none"> <li>• Do you have a board charter detailing the responsibilities of the board over management of the company?</li> <li>• Does your board have an appropriate mix of gender, age and culture?</li> <li>• Does your board reflect an appropriate balance of required skills, experience and independence?</li> <li>• Do you have a written, clearly defined, rigorous, formal and transparent procedure for the selection of directors to</li> </ul>

<sup>1</sup> This refers to companies that file returns to other regulators other than the Corporate Affairs Commission and Federal Inland Revenue Service.

<sup>2</sup> Section 1 (2) of the “Regulation on the Adoption and Compliance with Nigerian Code of Corporate Governance 2018”.

BROAD PARTS OF THE CODE	HOW HAS YOUR ENTITY ACHIEVED THE FOLLOWING?
	<p>ensure the appointment of high-quality individuals to the board?</p> <ul style="list-style-type: none"> <li>• Do you conduct inductions and regular trainings for your directors on the discharge of their duties and liabilities? <sup>3</sup></li> <li>• Do you have a clear separation of roles between the NEDs and INEDs?</li> <li>• Do you have a clear separation of responsibilities of the roles of the MD/CEO and Chairman of the board?<sup>4</sup></li> <li>• Are your directors holding similar positions in other companies, particularly in competing companies, and how many?</li> <li>• Do you have board committees?<sup>5</sup></li> <li>• Do you conduct an Annual Board Evaluation of the works and activities of each director and the committees of your board?<sup>6</sup></li> <li>• Does your board have a policy for evaluating compliance with the corporate governance practices?</li> <li>• Does your company have a fair and transparent remuneration policy?</li> </ul>
ASSURANCE	<ul style="list-style-type: none"> <li>• Do you have a sound framework for managing risks and ensuring an effective internal control system?</li> <li>• Do you have an effective internal audit team and evidence of reports to the board on compliance with governance, risk management and internal control systems?</li> <li>• Do you have a robust whistle blowing framework for reporting illegal and unethical practices?</li> <li>• Is the whistle blowing framework reliable, accessible and does it guarantee the anonymity of the whistle-blower, and that all disclosures resulting from whistleblowing are treated in a confidential manner?</li> <li>• Do you have a robust policy for appointment, reappointment and removal of external auditors?<sup>7</sup></li> </ul>

<sup>3</sup> Principle 6 & 7 requires The Independent Directors to exercise their duties skillfully and independently.

<sup>4</sup> E.g. para 2.9. "Chairman of the Board should not serve as chairman or member of Board Committees" & para 3.3. cool off period of three (3) years between transition of a MD/CEO to Chairman of the Board etc.

<sup>5</sup> E.g. Audit Committee, Remuneration Committee, Committee responsible for nomination and governance, and committee for risk management etc. Financial institutions may require more.

<sup>6</sup> This is important, especially as it relates to the Audit Committee (see para 11.4 of the Code).

<sup>7</sup> E.g. Is the re-appointment of your external auditor and engaged audit partner compliant with the 10 and 5 years break rules (see paras 20.2 and 20.4).

BROAD PARTS OF THE CODE	HOW HAS YOUR ENTITY ACHIEVED THE FOLLOWING?
	<ul style="list-style-type: none"> <li>• Are your external auditors able to carry out their functions truly, fairly and free from influences from the leadership of your entity?</li> </ul>
Relationship with Shareholders	<ul style="list-style-type: none"> <li>• Do you conduct your General Meetings regularly, openly, and in compliance with the notices period?</li> <li>• Do you ensure equal treatment of shareholders, regardless of their shareholding, during meetings?</li> <li>• Do you have a policy of communicating regularly with shareholders on changes to their rights and ownership structure of the firm?</li> </ul>
BUSINESS CONDUCT AND ETHICS	<ul style="list-style-type: none"> <li>• Do you have a code of business conduct and ethics which ensures, inter alia, that employees and board act in good faith and in the best interests of the entity?</li> <li>• Have you set out policies and mechanisms for the monitoring of insider trading, related party transactions, conflict of interest and other corrupt activities?</li> <li>• Does your insider trading policy enumerate how you mitigate the adverse effects of these abuses on the company, and promotes good ethical conduct and investor confidence?</li> </ul>
SUSTAINABILITY	<ul style="list-style-type: none"> <li>• Do you regularly carry out corporate social responsibility activities within the community?</li> <li>• Are your business practices environmentally, socially and economically friendly?</li> <li>• Do you have a robust sustainability policy that ensures compliance with your environmental, social and governance objectives?</li> </ul>
TRANSPARENCY	<ul style="list-style-type: none"> <li>• Do you have a stakeholder management and communication policy?</li> <li>• Can you demonstrate that important information about your business practices, and how it impacts your stakeholders, are disseminated timeously, truthfully and fairly, across all channel?</li> </ul>

BROAD PARTS OF THE CODE	HOW HAS YOUR ENTITY ACHIEVED THE FOLLOWING?
DISCLOSURE	<ul style="list-style-type: none"> <li>Is your board able to provide adequate, true and fair report on the compliance with the corporate governance codes – across all the broad spectrum identified above?<sup>8</sup></li> </ul>

### 3.0 Conclusion

We welcome the level of disclosure required under the Code, as it is necessary to ensure entrenching corporate governance principles in the relevant entities. As companies are now preoccupied with publishing or making arrangements to publish their annual reports, we hope Relevant Entities may find this checklist useful in making their corporate governance reports. We appreciate that some requirements in the 2018 Code may be in conflict with the Companies and Allied Matters Act, and other Code of Corporate Governance currently in force. In this instance, expert

opinion on the level of compliance to be reported may be employed. Odujinrin & Adefulu is happy and has the necessary expertise to assist companies who require our services in reviewing their level of compliance with the 2018 Code/the Regulation, and corporate governance codes generally.

*For more information, please email: [CHN@odujinrinadefulu.com](mailto:CHN@odujinrinadefulu.com) or check our website [www.odujinrinadefulu.com](http://www.odujinrinadefulu.com) for additional information on the range of our services.*



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<sup>8</sup> **Kindly note:** These checklists are not exhaustive. You should be able to provide a summary of how these have been achieved in the preceding financial year.