

# Corporate Governance 2021

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# Corporate Governance 2021

**Contributing editor****Holly J Gregory****Sidley Austin LLP**

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Lexology Getting The Deal Through is delighted to publish the twentieth edition of *Corporate Governance*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Australia.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Holly J Gregory, for her continued assistance with this volume.



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# Nigeria

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## SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

### Primary sources of law, regulation and practice

- 1 What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The main sources of law relating to corporate governance are the:

- Companies and Allied Matters Act 2020 (CAMA);
- Investment and Securities Act;
- Financial Reporting Council of Nigeria Act (FRCA);
- Banks and Other Financial Institutions Act;
- Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses in Nigeria (the CBN Code);
- Insurance Act;
- National Insurance Commission Act (the NAICOM Act);
- Nigerian Code of Corporate Governance issued by the Financial Reporting Council of Nigeria;
- CBN Code of Corporate Governance for Microfinance Banks in Nigeria;
- CBN Code of Corporate Governance for Development Finance Institutions in Nigeria;
- CBN Code of Corporate Governance for Finance Companies in Nigeria;
- NAICOM Code of Corporate Governance for the Insurance Industry in Nigeria;
- Code of Corporate Governance for Licensed Pension Operators;
- Rule Book of the Nigerian Stock Exchange;
- Securities and Exchange Commission Code of Corporate Governance in Nigeria (the SEC Code);
- SEC Rules and Regulations;
- SEC Code of Conduct for Shareholders' Associations (SCCSA);
- Nigerian Communications Commission Code of Corporate Governance for telecommunication companies; and
- Nigerian Stock Exchange Guidance on Companies' Virtual Board, Committee and Management Meetings (NSE Guidance).

The Rule Book of the Nigerian Stock Exchange requires mandatory compliance with listing rules.

### Responsible entities

- 2 What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder or business groups, or proxy advisory firms, whose views are often considered?

The primary government entities responsible for making these rules are:

- the Corporate Affairs Commission (CAC), created under CAMA, which oversees the registration of companies and compliance by corporate bodies with the provisions of CAMA;
- the Securities and Exchange Commission (SEC), created under the Investment and Securities Act, which regulates the capital market;
- the Central Bank of Nigeria, which regulates banks and other financial institutions in Nigeria;
- the National Insurance Commission, established under the NAICOM Act, which ensures compliance by insurance companies with the provisions of the NAICOM Act and the Insurance Act;
- the National Pension Commission established under the Pension Reform Act, which regulates pension fund administrators and pension fund custodians;
- the Nigerian Communications Commission, established under the Nigerian Communications Act (NCA), which regulates the communications industry in Nigeria and ensures compliance with the NCA;
- The Financial Reporting Council of Nigeria (FRCN), created under the Financial Reporting Council of Nigeria Act, is empowered to enforce and approve compliance with accounting, auditing, corporate governance and financial reporting standards in Nigeria and is charged with ensuring good corporate governance practices in the public and private sector; and
- the Directorate of Corporate Governance, which was created under the Financial Reporting Council of Nigeria Act, is responsible for issuing a code of corporate governance and guidelines and developing a mechanism for periodic assessments of the code and guidelines.

There are several shareholder activist groups in Nigeria and these groups are more active in participating in annual general meetings, influencing decision-making at these meetings and protecting shareholders' rights.

Regulatory authorities, such as the SEC and the FRCN, adopt a consultative process in making regulations to obtain the views of various stakeholders, including shareholder groups. The SCCSA is one of the means through which the SEC seeks to ensure the highest standard of conduct among association members and the companies with which they interact as shareholders and to ensure that association members make positive contributions in the affairs of public companies. The SCCSA prescribes that shareholders' associations be registered with the CAC for their views to be considered by the SEC during consultations on corporate governance issues.

## THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

### Shareholder powers

- 3 | What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

Shareholders in a general meeting have the power to appoint or remove directors by a resolution passed by a simple majority of votes cast in person or by proxy. Though the board of directors of a company is empowered to appoint new directors to fill casual vacancies created by death, resignation, retirement or removal, these appointments are, however, subject to ratification by the shareholders in a general meeting. Generally, unless the articles of association provide otherwise, the directors, when acting within the powers conferred upon them by the Companies and Allied Matters Act 2020 (CAMA) or the articles, are not bound to obey the directions or instructions of the shareholders in general meetings provided that the directors act in good faith and with due diligence. This notwithstanding, the shareholders may make recommendations to the board regarding actions to be taken by it and may ratify or confirm any action taken. The Securities and Exchange Commission Code of Corporate Governance in Nigeria (the SEC Code) provides that the board is to ensure that all shareholders are given equal treatment and minority shareholders are adequately protected from the abusive actions of controlling shareholders. In addition, there should be adequate shareholder representation on the board proportionate to the size of shareholding.

A shareholder can bring a court action to restrain the directors from entering into an illegal or ultra vires transaction or perpetuating a fraud. Members holding 5 per cent of the total voting rights in the company could circulate a resolution to be voted upon at a general meeting, indicating a course of action that should be adopted by the directors of the company.

Under CAMA, a company may remove a director before the expiry of his or her tenure of office, notwithstanding anything in its articles or in any agreement between the company and the director. However, CAMA requires that a special notice be given to those entitled to attend and vote, as well as the director sought to be removed, to move and pass this resolution. The company shall also give its members notice of this resolution a minimum of 21 days before the meeting where the removal of the director is to be considered.

### Shareholder decisions

- 4 | What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

The shareholders in a general meeting are empowered to:

- appoint and remove directors of the company;
- determine directors' remuneration;
- appoint auditors and approve their remuneration;
- alter the company's share capital;
- alter the memorandum and articles of association of the company;
- approve the conversion of the company from a private to a public company and vice versa, and from a limited company to an unlimited company and vice versa;
- change the company's name; and
- declare a dividend on the recommendation of the board.

CAMA provides that, subject to the provisions of the articles of association of a company, there are certain powers of the board that cannot be restricted by the shareholders in a general meeting. These include

powers over the day-to-day running of the company and the powers of the directors to institute actions on behalf of the company. Where the board fails to institute or defend an action on behalf of the company when it ought to do so because the board is itself in the wrong or there is a deadlock on the board, then the shareholders may apply to a court to bring the action on behalf of the company.

Where the articles of association of a company expressly vest the board with certain powers, it is not bound to obey the instructions of the shareholders, especially when it acts in good faith and with diligence. In these situations, the shareholders may only amend the articles of association of the company such that those powers are now made exercisable by the shareholders in a general meeting and not by the board of directors.

### Disproportionate voting rights

- 5 | To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

CAMA expressly prohibits disproportionate voting rights and the limitation of voting rights. The basic rule is 'one share, one vote' and no company may, by its articles or otherwise, authorise the issue of shares that carry more than one vote in respect of each share or that do not carry any rights to vote. There are, however, a few exceptions. Preference shareholders, if the articles of the company so provide, can have more than one vote per share upon consideration of any resolution:

- where a dividend on the preference share remains unpaid after the due date of the dividend;
- that seeks to vary the rights attached to the preference shares;
- to appoint or remove an auditor; and
- for winding up the company.

Furthermore, any special resolution of a company increasing the number of any class may validly resolve that any existing class of preference shares carry the right to the votes in addition to the one vote per share necessary to preserve the existing ratio that the votes exercisable by the holders of these preference shares bear to the total votes exercisable at the meeting. The rights of members to vote upon their shares may also be limited by the company's articles until all calls or other sums payable to the company by them in respect of the shares have been paid.

### Shareholders' meetings and voting

- 6 | Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

All shareholders are entitled to attend and vote at the company's general meeting. However, until the name of a person with shares in a company has been entered as a member in the register of members, which companies are statutorily required to maintain, that person will not be deemed a member of the company and, therefore, may not attend meetings of the company or be allowed to vote at these meetings.

The articles of a company may also provide that members who have not made payments on all calls on their shares shall not be entitled to attend meetings.

Shareholders of a private company can act by way of written resolution. CAMA provides that a resolution of the shareholders of a company would be effective only if it is passed at a general meeting. However, the shareholders of a private company may act by a written resolution signed by all the shareholders entitled to attend and vote at the general meeting of the company where the resolution would have been passed.

Generally, CAMA provides that (with the exception of small companies and companies having a single shareholder) all statutory and annual general meetings shall be held in Nigeria. However, a private company may hold its general meetings electronically, provided that such meetings are conducted in accordance with its articles of association. Although CAMA makes no provisions for the conduct of virtual meetings by public companies, the Nigerian Stock Exchange Guidance recommends that the articles of association of a company or its Board, Committee, and Management Charters or Terms of Reference should provide or be altered to provide for and authorise virtual meetings. In practice, a company may provide for the holding of virtual meetings in its articles of association.

## Shareholders and the board

### 7 | Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

The duty to call general meetings of shareholders is one held by the board of directors. However, a shareholder or shareholders representing at least 10 per cent of the shareholding (or voting rights in a company without share capital) of the company may requisition a general meeting at any time. Where the board refuses to convene the requisitioned meeting within 21 days, the requisitionists are authorised to convene the meeting (within three months of the requisition) after issuing the required notices, and any reasonable expenses incurred in relation to the meeting shall be repaid by the company.

The nomination of a person to the board of directors can be put to a vote at a general meeting, provided that prior notice (not less than three days or more than 21 days prior to the meeting) outlining his or her intention to propose this person for election has been given, signed by a shareholder qualified to attend and vote at the meeting and accompanied by a notice in writing signed by the nominated person of his or her willingness to act.

## Controlling shareholders' duties

### 8 | Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

There are no statutory provisions that expressly provide that controlling shareholders owe legal duties to the company or minority shareholders. However, the following codes provide that it is the responsibility of the board to ensure that minority shareholders are protected from the overbearing influence of controlling shareholders of a company and to ensure the fair treatment of all shareholders:

- the Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses in Nigeria (the CBN Code);
- the CBN Code of Corporate Governance for Microfinance Banks (MFBs) in Nigeria;
- the CBN Code of Corporate Governance for Development Finance Institutions (DFIs) in Nigeria;
- the CBN Code of Corporate Governance for Finance Companies (FCs) in Nigeria;
- the Nigerian Code of Corporate Governance (the NCCG);
- the SEC Code; and
- the National Insurance Commission Code of Corporate Governance for the Insurance Industry in Nigeria.

Further, if a controlling shareholder infringes on the rights of a minority shareholder, or commits a fraud on either the company or the minority

shareholder, which the directors fail to redress (owing to the wrongdoer being in control of the company or otherwise), the non-controlling shareholder may apply to a court for injunctive relief.

A shareholder may also bring an application to the court for relief on the grounds that the actions of the company are being conducted in an unfairly prejudicial and oppressive or discriminatory manner.

Further, a shareholder may bring a derivative action on behalf of the company where the wrongdoers are effectively in control of the company, the directors refuse to act, the application is brought in good faith, and it is in the best interest of the company. Evidence that the majority shareholders have approved any such wrongdoing will not in itself prevent a shareholder from seeking relief from the courts.

A shareholder who possesses significant control over a company, whether a private company or a public company, must notify the company of the particulars of such control, within seven days of becoming such a person. The company shall not later than one month from the receipt of such information, notify the CAC and disclose the same in its annual return.

Also, a shareholder who possesses, either directly or through a nominee, shares in a public company that entitles the shareholder to exercise 5 per cent of the unrestricted voting rights at any general meeting is considered a substantial shareholder and must notify the company of his or her interest within 14 days after that person becomes aware that he is a substantial shareholder. The company shall within 14 days of receipt of the notice or of becoming aware that the person is a substantial shareholder give notice in writing to the CAC. The duty also arises where the person ceases to be a substantial shareholder (that is, his or her shareholding falls below 5 per cent).

A 'person with significant control' is defined as a person:

- 1 directly or indirectly holding at least 5 per cent of shares or interest in a company;
- 2 directly or indirectly holding at least 5 per cent of the voting rights in a company;
- 3 directly or indirectly holding the right to appoint or remove a majority of the directors;
- 4 who has the right to exercise, or who actually exercises, significant influence or control over a company; or
- 5 who has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm.

Definition (5) also applies to legal persons that satisfy any of the conditions (1) to (4).

## Shareholder responsibility

### 9 | Can shareholders ever be held responsible for the acts or omissions of the company?

Shareholders are generally not liable for the acts or omissions or debts of the company as the liability of shareholders is limited to the amounts yet to be paid on their shares. In the case of an unlimited company, the liability of members for the debts of the company is unlimited. The company is a separate legal personality from its members. However, the courts may 'lift the corporate veil' where a company is a mere sham or is being used as a tool to perpetuate illegality. A shareholder may also be liable where, to his or her knowledge, the company operates with less than two directors.

## Employees

### 10 | What role do employees have in corporate governance?

CAMA provides for the protection of employees who are required to make disclosures into the affairs of his or her employer to an inspector appointed to conduct an investigation into that company and makes

provision for compensating such employees in the event that they are relieved of their employment without any just cause, other than the disclosure made during the course of the investigation.

The Central Bank of Nigeria Code and the SEC Code require every public company to establish whistle-blowing procedures that encourage staff to report unethical activity or breaches of corporate governance to the bank and Central Bank of Nigeria, under the CBN Code, and the company, under the SEC Code. In addition to the provisions of the CBN Code on whistle-blowing, the CBN Codes for MFBs, DFIs and FCs require that MFBs, DFIs and FCs submit returns to the CBN on compliance with the whistle-blowing policy on a semi-annual basis no later than seven days after the end of the relevant period. The Investment and Securities Act also makes provision for employees of publicly quoted companies to report suspected criminal activities or non-compliance with any legal obligation within the company. The law provides that any such whistle-blower shall be protected from detriment as a result of his or her actions. Where he or she suffers any detriment, the Securities and Exchange Commission may, on his or her complaint, order that the employee be reinstated or compensated, or both. The CBN Guidelines for Whistle-Blowing in the Nigerian Banking Industry 2014 provide similar protection for employees of financial institutions. The Nigerian Code of Corporate Governance is in tandem with the stipulations of the CBN Code and SEC Code.

In addition, the managing director and executive directors, as employees of the company, are responsible for the implementation of corporate governance policies.

The PENCOM Whistle-Blowing Guidelines for Pensions (WBGPP) provides that the directors, management, employees and any other persons that have dealings with a pension fund administrator or a pension fund custodian shall have the responsibility to report breaches to PENCOM and requires that all pension fund administrators and custodians undertake not to victimise employees that comply with the WBGPP. Where victimisation nonetheless occurs, the WBGPP provides that PENCOM shall employ appropriate regulatory tools to offer redress to the employee concerned.

## CORPORATE CONTROL

### Anti-takeover devices

#### 11 | Are anti-takeover devices permitted?

There are generally no rules prohibiting anti-takeover devices. The directors have a duty to act in the best interests of the company in all situations. Major shareholders of a company may enter into a lock-in arrangement.

The Investment and Securities Act mandates directors of a target company to send circulars to members of the target company expressing their opinion one way or the other on a takeover bid. A dissenting director can also circulate his or her opinion to the shareholders.

### Issuance of new shares

#### 12 | May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

The power to issue shares is vested in the company. A private company may delegate this power to the directors, subject to any condition or direction that may be imposed in the articles or by the company in a general meeting.

CAMA provides for the pre-emptive rights of shareholders in a company and makes it mandatory for a company to offer newly issued shares to its existing shareholders first. In practice, the articles of a company usually provide for pre-emptive rights. However, any such provisions in the articles cannot vary the existing shareholders' statutory right of first refusal.

### Restrictions on the transfer of fully paid shares

#### 13 | Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

The transfer of shares of a private company is subject to restrictions as specified in its articles of association. Restrictions commonly employed include provisions on pre-emptive rights. The right of pre-emption gives the other shareholders the first option to buy any shares a shareholder wishes to sell or transfer. Other restrictions employed are clauses in a company's articles giving the board of directors, and, in some cases, the shareholders, the discretion to refuse to approve or register a transfer of shares to persons or entities of whom they do not approve.

Public companies are expressly precluded from restricting the transfer of fully paid shares.

### Compulsory repurchase rules

#### 14 | Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

A company may only repurchase its shares including irredeemable shares upon the fulfilment of certain conditions. These conditions are:

- if this action is permitted by the company's articles;
- a special resolution is passed by the shareholders approving the repurchase of the shares;
- the shares are fully paid up;
- notice of the proposed purchase by the company of its own shares is published in two national newspapers within seven days of passing the special resolution;
- a statutory declaration of solvency is filed with the CAC within 15 days after the newspaper publication; and
- the company would still retain some of its issued shares other than redeemable shares or shares held as treasury shares.

A company may only repurchase its shares from certain persons or channels, including:

- existing shareholders or security holders on a proportionate basis;
- from the existing shareholders in a manner permitted by a court sanction in respect of a scheme of arrangement;
- from the open market; or
- by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or any other similar scheme.

CAMA provides that an agreement with a company providing for the acquisition by a company of its shares is specifically enforceable against the company to the extent that the company can perform the agreement without breaching the provisions of CAMA on the repurchasing of shares. Any public company seeking to repurchase its own shares is also required to obtain the approval of the Securities and Exchange Commission and comply with the SEC Rules and Regulations.

Where the shares are to be repurchased by the company, payment for the shares may only be made from the distributable profits of the company.

### Dissenters' rights

#### 15 | Do shareholders have appraisal rights?

CAMA and the Investment and Securities Act provide that where the approval of 90 per cent of the shareholders has been obtained, the shares of the dissenting shareholders (those who have not approved a scheme of merger, takeover or acquisition) may be acquired, with notice, at the value agreed by the consenting shareholders except where the dissenting shareholders apply to a court to have those terms



varied. Aggrieved shareholders may petition the court to make an order compelling the company to buy them out at a price to be determined by the court.

## RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

### Board structure

16 | Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

The board structure for listed companies can best be described as one-tier, comprising both executive and non-executive directors.

### Board's legal responsibilities

17 | What are the board's primary legal responsibilities?

The board's legal responsibilities include directing and managing the affairs of the company, securing its assets, performing its duties in the interest of the company and furthering the purposes for which the company was formed.

### Board obligees

18 | Whom does the board represent and to whom do directors owe legal duties?

The board represents the company and owes its duties primarily to the company. The board is to perform its duties in the interest of the company and all its shareholders as a whole, and not in the interest of a specific shareholder or a section of the shareholders. The board is also to take into consideration the interests of the employees in general in performing its duties. However, the interests of the company must always come first, regardless of whether the actions of the board may adversely affect a shareholder.

### Enforcement action against directors

19 | Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgement rule?

The directors owe their duty to the company. The company can bring an action against a director to enforce any duty imposed by law or contract. A shareholder may bring an action to prevent or redress a breach of duty by the directors.

A shareholder may also, with the leave of court, bring a derivative action on behalf of the company where the wrongdoers are directors who are in control and, thus, will not redress the wrong done to the company. A shareholder may also apply for relief from the court on the grounds that the affairs of the company are being conducted in an unfairly prejudicial and oppressive manner.

### Care and prudence

20 | Do the duties of directors include a care or prudence element?

The directors of a company owe a duty of care and skill to the company and are to exercise the degree of care and skill that a reasonably prudent director would exercise in comparable circumstances. A director is required to exercise the powers and duties of his or her office honestly, in good faith and in the best interests of the company.

### Board member duties

21 | To what extent do the duties of individual members of the board differ?

The same standard of care in relation to the duties of a director is expected of all members of the board, including executive and non-executive directors. The relationship is a fiduciary one, and directors are trustees of the company's assets and are bound to exercise their powers in the interest of the company.

However, there may be additional contractual liabilities and benefits for executive directors under the principles of 'master and servant' where there is a contract to that effect.

### Delegation of board responsibilities

22 | To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

The board is empowered, subject to any specific provisions in the articles to the contrary, to delegate any or all of its powers to a managing director or to committees made up of members of the board. The managing director or committee shall, in exercising the responsibilities delegated to them, conform to any directions or regulations of the board. However, this delegation should not be done in such a way that it amounts to an abdication of duty. Even after delegating its powers, the overall responsibility of directing and managing the affairs of the company still ultimately lies with the board.

### Non-executive and independent directors

23 | Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Non-executive directors are those whose roles are strictly supervisory and who do not participate in the day-to-day running of affairs of the company but are, nevertheless, important members of any board in the sense that they play a key role in the transparency, integrity and credibility of the board. An independent director, on the other hand, serves the function of bringing an objective, unbiased perspective to the board in carrying out its functions.

The Companies and Allied Matters Act 2020 (CAMA) and the various codes that govern specific industries set out different requirements for the numbers and types of directors of companies operating in those sectors, and different definitions of 'independent director'.

### CAMA

CAMA makes it mandatory for public companies to have at least three independent directors. It describes an 'independent director' as a director (or whose relatives either separately or together with the director or each other) during the two years preceding their proposed appointment:

- was not an employee of the company;
- did not:
  - make payments to, or receive payments from, the company of more than 20 million naira; or
  - directly or indirectly own more than a 30 per cent of shares or other ownership interest in any entity that the company made payments to, or received payments from, of more than 20 million naira; or
  - act as a partner, director or an officer of a partnership or a company that made payments to, or received payments from, of more than 20 million naira;



- did not own directly or indirectly more than 30 per cent of the shares of any type or class in the company; and
- was not engaged, directly or indirectly, as an auditor for the company.

### The SEC Code

The Securities and Exchange Commission Code of Corporate Governance in Nigeria (the SEC Code) recommends that there be at least five members of a board, with a mix of both executive and non-executive directors, that latter should outnumber the former, and there should be a minimum of one independent director.

The SEC Code describes an independent director as a non-executive director who:

- is not a substantial shareholder of the company (ie, their shareholding, directly or indirectly, does not exceed 0.1 per cent of the company's paid-up capital);
- is not a representative of a shareholder that has the ability to control or significantly influence management;
- has not been employed by the company or the group of which it currently forms part, or has not served in any executive capacity in the company or the group, for the preceding three financial years;
- is not a member of the immediate family of an individual who is, or has been in any of the past three financial years, employed by the company or the group in an executive capacity;
- is not a professional adviser to the company or group, other than in the capacity of a director;
- is not a significant supplier to or customer of the company or group;
- has no significant contractual relationship with the company or group and is free from any business or other relationship that could materially interfere with his or her capacity to act in an independent manner; and
- is not a partner or an executive of the company's audit firm, internal audit firm, legal or another consulting firm that has a material association with the company and has not been a partner or an executive of any such firm for the three financial years preceding his or her appointment.

### The CBN Code

The Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses in Nigeria (the CBN Code) provides that the number of non-executive directors on a bank's board should exceed the number of executive directors, and at least two of the non-executive directors should be independent directors; and that for discount houses at least one non-executive director should be an independent director.

### The PENCOM Code

The Code of Corporate Governance for Licensed Pension Operators (the PENCOM Code) provides that the number of non-executive members (excluding the chair) of a board must equal the number of executive directors, and at least one non-executive member should be an independent director. It defines an 'independent director' as one who has no relationship with the company, its related companies or officers that could interfere or be reasonably perceived to interfere with the exercise of his or her independent business judgement.

### The NAICOM Code

The National Insurance Commission Code of Corporate Governance for the Insurance Industry in Nigeria (the NAICOM Code) provides that the board of insurance companies should have a minimum of seven and a maximum of 15 members, that the maximum number of executive directors should not exceed 40 per cent of the board, and there should be at least one independent director.

### The NCC and NCCG Codes

The Nigerian Communications Commission Code of Corporate Governance for telecommunication companies (the NCC Code) and the Nigerian Code of Corporate Governance (the NCCG) also provide that the number of non-executive directors should exceed the number of executive directors; however, the NCC Code also requires at least one non-executive director to be an independent director.

### Board size and composition

- 24 | How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

### Qualifying for a directorship

Generally, persons of unsound mind, under the age of 18, previously convicted of fraud or breach of duty in connection with the promotion, formation or management of a company, and insolvent persons are statutorily disqualified from being directors.

There is no restriction on the nationality of directors. Non-Nigerian citizens are permitted to be directors. Aside from the NCCG and the NCC Codes, there are no gender requirements for the composition of boards.

A person over 70 years of age, who is or is to be appointed as a director in a public company, is required to disclose his or her age to the members of the company in a general meeting. Failure to do so amounts to an offence under the CAMA. Special notice of the resolution approving or appointing such a director must be given by the company to its members, disclosing the age of the director.

An appointee to the board of a public company is also expected to disclose his or her membership of boards of other companies to enable the shareholders to give full consideration to his or her other obligations and commitments in determining his or her suitability to be a board member.

However, additional criteria are contained in the various Codes that govern specific industries, as can specific company's by-laws and articles. For example, a company may, by its articles, require that directors hold a specified number of shares. A director who fails to obtain their share qualification within two months of appointment must vacate his or her office until he or she obtains the shareholding qualification.

The PENCOM Code provides that a director of a pension fund administrator must not be a director, an employee, a principal officer or a shareholder in a pension fund custodian with which the pension fund administrator conducts business.

The regulations and guidelines governing certain industries may require managing directors and key management operating in these areas to have specific qualifications.

The SEC Code permits public companies to form governance or remuneration committees, the function of which is to establish the criteria for board and board committee membership and to periodically evaluate the skills, knowledge and experience required to sit on the board.

The CBN Code prescribes that members of the board shall be qualified persons of proven integrity and be knowledgeable in business and financial matters, in accordance with the extant CBN Assessment Criteria for Approved Persons' Regime for Financial Institutions. This is the same position in the CBN Codes for microfinance Banks (MFBs), development finance institutions (DFIs) and finance companies (FCs).

The NAICOM Code also emphasises competence and integrity.

### Composition of boards of directors

CAMA requires every company that is not a small company (which can only have one director) to have a minimum of two directors at all times but does not state a maximum number of directors. However, it does provide that the number of directors shall be determined in writing by the subscribers of the company's memorandum of association, or a majority of them with the power of the shareholders at a general meeting to increase or reduce the board.

The laws and regulations governing particular industries also set a minimum and a maximum number of board seats:

- The CBN Code prescribes a minimum and maximum board size of five and 20 directors respectively.
- The SEC Code prescribes a minimum of five directors and directs that the board of a company be of a sufficient size relative to the scale and complexity of the operations of the company.
- The NAICOM Code prescribes a minimum of seven and a maximum of 15 board members for insurance companies.
- The PENCOM Code prescribes that the board of a company shall not exceed a size that will allow it to employ simple and effective methods of work to enable each director to feel a personal responsibility and commitment to the company, and the board must take into account the scope and nature of the company's operations.
- The NCC Code requires:
  - that the composition of a board includes a mix of skills, diversity, experience and genders;
  - that the number of directors should reflect the scale, size, complexity and reach of the business of the company;
  - that the skills and resource requirements of the company have to be taken into consideration;
  - a majority of the board to be non-executive directors;
  - at least one independent director must hold, directly or indirectly, no more than 0.1 per cent of a shareholding in the company;
  - one-third of the non-executive directors retire each year by rotation, subject to reappointment; and
  - non-executive directors should not remain on the board of larger companies for a continuous period in excess of 15 years.
- The NCCG does not provide for a minimum or a maximum number of directors, but recommends that a board be of sufficient size to effectively undertake and fulfil its business (ie, overseeing, monitoring, directing and controlling the company's activities) and be relative to the scale and complexity of the company's operations. However, it does require a board to have at least one independent director, who may hold, directly or indirectly, no more than 0.1 per cent of a shareholding in the company.

The CBN Code for MFBs requires the following of MFBs' boards.

- Unit MFB boards:
  - must have a minimum of five and a maximum of seven members;
  - including at least one independent non-executive director (INED); and
  - the managing director or chief executive must be the only executive director.
- State MFB boards:
  - must have a minimum of five and a maximum of nine members, including:
    - at least one INED, if there are five or six members; or
    - at least two INEDs, if there are seven members.
- National MFB boards:
  - must have a minimum of seven and a maximum of 12 members;
  - including at least two INEDs.

The CBN Code for DFIs requires that a board of a DFI:

- has a minimum of seven and a maximum of 11 members; or
- be in accordance with the law establishing the institution; and
- that the board of any FC be limited to a minimum of five and a maximum of nine members.

The CBN Codes for MFBs, DFIs and FCs also provide that:

- no more than two members of a family can be on the board at the same time ('family' includes a director's spouse, parents, children, siblings, cousins, uncles, aunts, nephews, nieces and in-laws); and
- a board must be constituted in such a way that the number of non-executive directors exceeds the number of executive directors.

### Filling vacancies

Vacancies on a board may be filled by the shareholders of a company during a general meeting.

A board of directors is also empowered to appoint new directors to fill casual vacancies created by death, resignation, retirement or removal of a director. These appointments are, however, subject to ratification by the shareholders at the next general meeting.

### Board leadership

**25** Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chair and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

While the role of the chief executive is to see to the day-to-day running and management of the company, the chair's role is to provide overall leadership, direction and supervision of the board. The separation of the roles of board chair and CEO is considered best practice.

CAMA provides that the chair of a public company must not act as the chief executive of such a company. A similar restriction exists in NCCG.

The SEC Code recommends that the board of a company should not be dominated by any one person, and the positions of chair and CEO should be separate and held by different individuals. In addition, the chair should be a non-executive director to ensure the effective operation of the board.

The CBN Code (including the Codes for MFBs, DFIs and FCs) and the NAICOM Code state that no single person shall hold or combine the office of chair of the board and CEO or managing director. The CBN Code further provides that no executive vice-chair shall be recognised in the board structure.

The PENCOM Code, the NCCG and the NCC Code also require the position of chair of the board and CEO to be occupied by separate individuals.

### Board committees

**26** What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

#### Audit committees

Every public company is required to set up an audit committee of five members comprising of three members and two non-executive directors. Members of an audit committee are not entitled to remuneration and are subject to re-election annually. The functions of an audit committee include:

- ascertaining whether the accounting and reporting policies of the company are in accordance with legal requirements and agreed ethical practices;

- reviewing the scope and planning of audit requirements;
- reviewing the findings on management matters in conjunction with the external auditor and departmental responses thereon;
- keeping under review the effectiveness of the company's system of accounting and control;
- making recommendations to the board regarding the appointment, removal and remuneration of the external auditors of the company; and
- authorising the internal auditor to carry out investigations into any activities of the company that may be of interest or concern to the committee.

The various corporate governance codes require that members of the audit committee should be able to read and understand basic financial statements and be in a position to make valuable contributions to the committee, and the SEC and CBN Codes provide that at least one member of this committee should be financially literate. The SEC Code further provides that, when necessary, external professional advice may be sought by the committee.

### **Risk management and governance or remuneration committees**

In addition to an audit committee, the SEC Code permits the board of a public company is to establish a risk management committee and a governance or remuneration committee.

The risk management committee assists in the overseeing of the risk profile and the risk management framework to be determined by the board.

The governance or remuneration committee periodically evaluates the skills and experience required of the individual members of the board and the board as a whole and makes recommendations on the compensation structure for the executive directors of the company.

### **Committees under the CBN Codes**

The CBN Code also directs banks and discount houses in Nigeria to establish committees responsible for overseeing risk management and auditing (it provides that these functions may be carried out by one committee, particularly in small institutions), and a board governance and nominations committee.

The Code proscribes the chair of a board from being a member or chair of any committee, and provides that board committees must be headed by non-executive directors; a board remuneration committee must have at least two non-executive directors; and a board audit committee must have at least three members, consist only of non-executive directors, and be headed by an independent director.

The CBN Codes for MFBs, DFIs and FCs maintain the same positions as the main CBN Code, but make no provisions for the composition of remuneration committees and provide for an additional committee: the board credit committee. The Codes for MFBs and FCs merely state that this committee must be comprised of members knowledgeable in credit analysis.

The Codes for MFBs and FCs require all board committees to have their charters approved and reviewed every three years, or from time to time as determined by the Central Bank of Nigeria (CBN). The CBN Code and the CBN Code for DFIs merely state that each board committee must have a charter that is approved by the CBN.

Finally, the Codes for MFBs and FCs provide that a board may not replace members of the board audit committee and a company's external auditors at the same time.

### **Committees under the PENCOM Code**

The PENCOM Code requires pension fund administrators and pension fund custodians to constitute nominating committees, the duty of which is to make recommendations to the board on all board appointments.

This committee must consist of three directors, including the chair of the board and an independent director.

### **Committees under the NCCG**

The NCCG recommends establishing the same committees provided by the CBN Code, and also provides that when appointing members of the board committees, there should be a balanced distribution of power so that no individual has the ability to dominate decision-making and undue reliance is not placed on any individual; that each committee should be comprised of at least three members; and individual committee charters should indicate if they require INEDs.

It is common practice among quoted companies to have various board committees assist the board in administering the affairs of these companies and strengthening corporate governance. These committees, which may be known by different names in different companies, include nomination committees, general-purpose committees, remuneration or compensation committees, risk assessment committees, strategy committees, and corporate governance and finance committees.

### **Board meetings**

**27 | Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?**

There are no statutory minimum requirements on the number of board meetings per year. However, directors are required to meet no later than six months after the incorporation of the company. The directors may otherwise regulate their meetings.

The PENCOM, CBN, SEC and NCC Codes, the NCCG, and the CBN Codes for MFBs, DFIs and FCs recommend that board meetings be held at least quarterly in each financial year. The NAICOM Code provides that the board should meet not less than four times a year.

### **Board practices**

**28 | Is disclosure of board practices required by law, regulation or listing requirement?**

### **CAMA**

CAMA provides that, where a director presents him or herself for re-election, a record of his or her attendance at meetings of the board during the preceding year must be made available to members at the general meeting where he or she is to be re-elected. Where a person to be appointed or re-elected as a director is 70 years old or older, a notice of his or her election or re-election must disclose their age to the shareholders.

### **The CBN Codes**

The CBN Code and the CBN Codes for MFBs, DFIs and FCs require the board to disclose the total number of board meetings held in the financial year and attendance by each director in its annual report.

The CBN Code also provides that members of the board be appraised by an independent consultant annually on all aspects of the board's structure, composition, responsibilities, processes and relationships, and the report of the independent consultant must be presented to the shareholders in the general meeting and to the CBN.

The CBN Codes for MFBs and FCs further provide that a copy of the annual board appraisal conducted by the independent consultant must be forwarded to the CBN no later than 31 March of the following year.

### **The SEC Code**

The SEC Code provides that the board of a public company must include a corporate governance report in its annual reports, to be circulated to members and the regulatory authorities.

The report may contain information on the composition and responsibilities of board committees and records of attendance at board and shareholders' meetings by directors during the period covered by the annual report; however, the SEC Code provides that the company's annual report ought to make sufficient disclosures on its accounting and risk management issues, indicating the board's responsibility for the process of risk management and its opinion on the effectiveness of the process.

Public companies must also disclose the details of any director's interests in contracts with the company, its subsidiaries or holding companies, and should also disclose any service contracts and any other significant contracts with controlling shareholders.

A company's directors are required to disclose:

- their shareholdings in the company;
- loans made by the company to the director;
- the director's interests in any contract involving the company; and
- any conflicts of interest in relation to the company.

The SEC Code also requires directors to disclose any directorships in other companies, so that the members of the company can take a director's other responsibilities into consideration when assessing his or her suitability as a director.

The NCCG has similar provisions to the SEC Code.

### Board and director evaluations

**29** Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or individual directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

#### The NCC Code

Under the NCC Code, the board is required to establish a system for periodic evaluation of its own performance and that of its committees, chair, chairs of its committees, and individual directors. This should be done at least annually.

A statement of evaluation must be included in a company's annual returns, stating whether an evaluation had been conducted during the period under the review. The evaluation must be an objective and independent process.

The appraisal of the chief executive is done by the board, or a committee of the board made up of non-executive directors.

#### The SEC Code

The SEC Code requires a board to establish a system to annually undertake a rigorous evaluation of its own performance and that of its committees, chair and individual directors. The board may engage the services of external consultants to facilitate the evaluation.

The chair oversees the evaluation of the CEO's performance, while the CEO oversees the executive directors' evaluations. The results of the evaluations must be communicated to and discussed by the board as a whole, while the chair must communicate and discuss the evaluation of the independent directors with them. The results are used as a guide for re-election.

The SEC Code recommends providing training for any director whose performance is found to be unsatisfactory or their removal from office if this is not feasible.

#### The PENCOM Code

The PENCOM Code has similar provisions to the SEC and NCC Codes, but also requires that copies of the evaluations are submitted to the Pension Commission and are included in the company's annual corporate governance report.

Under the PENCOM Code, the evaluation should answer questions such as:

- how well the board performed against any performance objectives that have been set;
- what the board's contribution to the testing and development of the strategy has been;
- whether the composition of the board and its committees is appropriate with the right mix of knowledge and skills to maximise performance in the light of future strategy;
- if the board responded to any problems or crises that have emerged and whether these could have been foreseen;
- how well the board communicates with the management team, company employees and others;
- how effectively the board uses mechanisms such as the annual general meeting;
- whether the board as a whole is up to date with the latest developments in the regulatory environment and the market;
- whether sufficient board and committee meetings of appropriate length are held to enable proper consideration of issues; and
- whether board procedures are conducive to effective performance and flexible enough to deal with all eventualities.

#### The CBN Codes

The CBN Code requires an annual formal assessment of the effectiveness of the board as a whole, and the contributions of each individual director (including the chair) to the effectiveness of the board.

The nomination committee recommends an evaluation procedure and proposes objective performance criteria, which are then approved by the board. The issues evaluated should include:

- individual directors':
  - attendance at meetings;
  - contributions to discussions at board meetings and board committee meetings;
  - business referrals or other support they provide to the institution;
  - their public standing; and
  - the effects of their standing on the institution's business; and
- the institution's:
  - compliance status;
  - overall performance;
  - regularity of board meetings; and
  - the overall contribution of the board to the institution's performance.

The CBN Codes for MFBs and FCs provide that an independent consultant must annually appraise board members on all aspects of the board's structure, composition, responsibilities, processes and relationships. This report must be presented to shareholders in a general meeting and also forwarded to the CBN no later than 31 March of the following year.

#### The NCCG

The NCCG provides that a board must establish a system to undertake a formal and rigorous evaluation of its own performance and that of its committees, chair and individual directors, facilitated by an independent external consultant, at least once every three years.

## REMUNERATION

### Remuneration of directors

- 30 | How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions or compensatory arrangements between the company and any director?

#### Remuneration of directors

The Companies and Allied Matters Act 2020 (CAMA) provides that the remuneration of directors should be determined by the company in a general meeting.

The Securities and Exchange Commission Code of Corporate Governance in Nigeria (the SEC Code) provides that the remuneration of executive directors should be set by a remuneration committee consisting wholly of non-executive directors. It also provides that the remuneration for non-executive directors should be fixed by the board and approved by the members in a general meeting and that, where share options are granted as part of the remuneration for directors, the board should ensure that they are not priced at a discount except with the approval of the Securities and Exchange Commission.

The Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses in Nigeria (the CBN Code) also requires the remuneration of directors to be fixed by a committee composed of non-executive directors, and the remuneration for non-executive directors should be strictly limited to directors' fees, sitting allowances for board and board committee meetings and reimbursable travel and hotel expenses. Executive directors do not receive sitting allowances and directors' fees.

The CBN Code further provides that stock options offered as part of executive remuneration shall be tied to performance subject to the approval of shareholders in general meeting, may only be exercisable after one year of the expiry of the director's tenure and may only be priced at a discount on the authorisation of relevant regulatory agencies.

The CBN Code of Corporate Governance for Microfinance Banks (MFBs) in Nigeria, the CBN Code of Corporate Governance for Development Finance Institutions (DFIs) in Nigeria, the CBN Code of Corporate Governance for Finance Companies (FCs) in Nigeria, and the Financial Reporting Council of Nigeria Code of Corporate Governance maintain the same position with the CBN Code in these respects.

The remuneration of each director should be proportionate to his or her skill and experience and should be sufficient to attract, motivate and retain skilled and qualified persons. The remuneration of directors is to be disclosed in the yearly financial statements of the company.

#### Tenures of directors

The CBN's guidelines for the appointment of independent directors restricts the term of office of independent directors to a single term of four years and a maximum of eight years for two consecutive terms. The tenures of other non-executive directors are limited to a maximum of three terms of four years each. The CBN Code allows a chief executive of a bank to hold a tenure of 10 years, which may be broken down into periods not exceeding five years at a time.

CAMA discourages directors' service contracts beyond a five-year term and provides that a service contract for a term beyond five years is executed must be approved by a resolution of the company before being executed.

The SEC Code, while subjecting the tenure of directors to the provisions of CAMA, recommends that all directors be submitted for re-election at regular intervals of at least once every three years. It

also provides that non-executive directors of public companies should serve for reasonable periods on the board, but emphasises the necessity to continually reinforce the board by injecting new energy, fresh ideas and perspective and that the board should ensure the periodic appointment of new directors to replace existing non-executive directors.

#### Company loans to directors

Companies are prohibited from making loans to directors and are also not allowed to guarantee such loans. However, CAMA provides two exceptions: loans to enhance the performance of the director's duties in the company, and where money lending is one of the company's ordinary businesses and the lending is done in the ordinary course of business.

In addition, substantial property transactions between a company and its directors are prohibited, unless approval is granted by the company by way of an ordinary resolution at a general meeting.

If a director is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company, he or she is required to declare the nature of his or her interest at a meeting of the board.

Banks are also required to disclose details of insider-related credits in their financial statements. These insider-related credits include transactions involving directors, shareholders and employees and their related interests.

#### Consideration payments

CAMA makes it unlawful for a company to make payment to a director as compensation for loss of office or as consideration for, or in connection with, his or her retirement from office unless particulars of the proposed payment and amount have been disclosed to the members of the company and approved.

Under CAMA, members' approval is also required for compensatory payments to be made where, in connection with the transfer of the whole or part of the undertaking or property of a company, it is proposed to make any payment to a director as compensation for loss of office or as consideration for, or in connection with, his or her retirement from office.

#### Remuneration of senior management

- 31 | How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions or compensatory arrangements between the company and senior managers?

The remuneration of the managing director is determined by the board.

Companies are prohibited from making loans to directors and are also not allowed to guarantee such loans. However, CAMA provides two exceptions: loans to enhance the performance of the director's duties in the company, and where money lending is one of the company's ordinary businesses and the lending is done in the ordinary course of business.

The Central Bank of Nigeria requires banks to disclose details of insider-related credits, including the aggregate amount of insider-related loans, advances and leases outstanding with non-performing components further analysed, examining the security, maturity, performance, provision, interest-in-suspense and names of borrowers in their financial statements.



**Say-on-pay**

- 32 | Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

Shareholders have a direct say in directors' remuneration. CAMA provides that directors' remuneration should be determined by the shareholders in a general meeting. Such votes take place at the annual general meeting of a company. However, the board fixes the remuneration of executive directors. The Financial Reporting Council of Nigeria and the SEC and CBN Codes stipulate that only the non-executive directors should be involved in decisions regarding the remuneration of executive directors.

**DIRECTOR PROTECTIONS****D&O liability insurance**

- 33 | Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

Directors' and officers' liability insurance is permitted. It is not common practice for companies to take out this insurance, though some companies, in keeping with international best practices, take out liability insurance for their directors and officers.

**Indemnification of directors and officers**

- 34 | Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

Companies are permitted to indemnify their directors and officers for liabilities incurred in their capacities as directors and officers of the company, except in cases of negligence, fraud or breach of trust in relation to the company.

**Advancement of expenses to directors and officers**

- 35 | To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

There are no specific provisions or statutory or regulatory restrictions on advancing expenses to directors or officers of a company in connection with litigation or similar proceedings where they are witnesses. The Companies and Allied Matters Act 2020 permits companies to pay directors all expenses incurred in connection with the business of a company. Therefore, arrangements for the payment of these expenses may be made contractually or be part of the policy of a company.

**Exculpation of directors and officers**

- 36 | To what extent may companies or shareholders preclude or limit the liability of directors and officers?

A company may ratify the act of an officer or director even where such an act or conduct is irregular. The company may also, by its articles (or by the director's contracts of service), limit the liability of a director except in cases of negligence, fraud or breach of trust of which a director or officer may be guilty in relation to the company.

Further, a company may also provide that the liability of a director must be unlimited, regardless of the fact that the company itself is a limited liability company, provided that the director is given notice before he or she takes up the appointment that his or her liability shall be unlimited. The company may also, by special resolution, amend its memorandum so as to render the liability of its directors or managers unlimited.

**DISCLOSURE AND TRANSPARENCY****Corporate charter and by-laws**

- 37 | Are the corporate charter and by-laws of companies publicly available? If so, where?

The memorandum and articles of association and other statutory filings of companies are available to the public at the Corporate Affairs Commission. Copies can be obtained upon application and are subject to the payment of prescribed fees.

**Company information**

- 38 | What information must companies publicly disclose? How often must disclosure be made?

Annual reports and accounts consisting of the directors' report, auditor's report and financial statements must be filed with the Corporate Affairs Commission after every annual general meeting of a company. These documents can be accessed by the general public upon payment of the requisite fee.

Other information filed with the Corporate Affairs Commission, which is available to the public, includes any changes in the composition of the board of directors, return of allotment of shares, change of registered address, charges on the company's assets, the appointment of receivers or liquidators, etc. Outside the statutory requirements, companies are encouraged to also include corporate governance reports laying out the company's governance structure, policies and practices in their annual reports.

Quoted companies are required to make certain disclosures to the Nigerian Stock Exchange and the Securities and Exchange Commission from time to time. These disclosures include:

- information on acquisitions of other companies or businesses;
- preliminary results for any year, half-year or quarter and comparative figures in respect of the profits before and after taxation, even if this calls for the qualification that these figures are provisional or subject to auditing;
- information on any proposed changes in the capital structure of the company or redemption of securities;
- financial statements; and
- interim reports, such as first quarter, half-year and nine-month accounts.

In addition, the annual reports must disclose, among other things, the directors' direct and indirect holdings in the issued shares, substantial shareholdings representing 5 per cent or more of issued shares and a five-year financial summary. The Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses in Nigeria and the Securities and Exchange Commission Code of Corporate Governance in Nigeria also require a board to disclose its risk management policy in its annual report, and the Nigerian Code of Corporate Governance also prescribes including a statement on a company's environmental, social and governance activities in its corporate governance report.

**HOT TOPICS****Shareholder-nominated directors**

- 39 | Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

Shareholders can nominate a director to be appointed to the board at the general meeting. The law states that a motion for nomination will be treated as a motion for his or her appointment.

A member may leave a signed notice in writing of his or her intention to propose a person for election to the office of a director in the place of a retiring director at a general meeting at the registered address of a company. The notice must be given no less than three days and no more than 21 days before the date appointed for the meeting and must be accompanied by a notice in writing signed by that person of his or her willingness to be elected.

One or more members representing no less than 5 per cent of the total voting rights of members entitled to vote at a general meeting, or 100 or more members holding shares on which there has been paid up an average sum per member of at least 500 naira, may requisition the company to circulate notice of a resolution they intend to be moved at a general meeting. The proposed resolution can suggest the appointment of a new director.

The company has a duty to give notice of the resolution to members entitled to receive notice of the next annual general meeting when the resolution is intended to be moved. The notice of the resolution shall be given in the same manner and, so far as practicable, at the same time as the notice of the meeting; where not practicable, notice shall be given soon thereafter. The company is, however, not bound to give notice of any requisition unless a duly signed copy is deposited at the registered address of the company, and a sum is deposited or tendered that is reasonably sufficient to meet the company's expenses in giving effect to it. The company may also decide to bear the expenses of circulating notice of the proposed resolution.

### Shareholder engagement

#### 40 Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

The process of engaging with the shareholders is typically led by the directors and senior management of the company. Generally, companies engage with their shareholders by holding general meetings. It is usual for directors, senior management, external counsel, auditors and other specialists or consultants engaged in relation to matters to be discussed or decided during a general meeting of the company to be involved in these engagements. Some quoted companies also organise pre-annual general meeting forums or dinners for directors, management, investors and major customers, etc, to interact.

The Securities and Exchange Commission Code of Corporate Governance in Nigeria (the SEC Code) provides that the general meetings of a company should be the primary avenue for meeting and interaction between the shareholders, management and board of a company. It further requires that general meetings should be conducted in an open manner allowing for free discussions on all issues on the agenda such that sufficient time is allocated to shareholders to participate fully and contribute effectively at the meetings.

The NAICOM Code of Corporate Governance for the Insurance Industry in Nigeria provides that directors should always communicate information that is understandable and accessible to shareholders in a timely manner and on a regular basis and encourage shareholders to participate in annual general meetings.

Under the Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses in Nigeria (the CBN Code), banks are encouraged to communicate with their shareholders via their websites. Information to be provided through this means shall include major developments in the bank, risk management practices, executive compensation, local and offshore branch expansions, the establishment of investment in subsidiaries and associates, board and top management appointments, and sustainability initiatives and practices.

The CBN Code of Corporate Governance for Microfinance Banks in Nigeria, the CBN Code of Corporate Governance for Development

Finance Institutions in Nigeria, the CBN Code of Corporate Governance for Finance Companies in Nigeria maintain the same position as the CBN Code. However, they add that the operators are encouraged to communicate with shareholders via the website, newsletters, annual general meetings and extraordinary general meetings.

The Nigerian Code of Corporate Governance provides that the board should develop a policy that ensures appropriate engagement with shareholders. The policy should be posted on the company website.

The Nigerian Communications Commission Code of Corporate Governance for telecommunication companies provides that there should be dialogue and engagement between the board and shareholders to align appreciation and attain a mutual understanding of the corporate objectives of telecoms companies.

### Sustainability disclosure

#### 41 Are companies required to provide disclosure with respect to corporate social responsibility matters?

While some of the codes encourage corporate social responsibility, they do not all have specific disclosure requirements.

The SEC Code requires companies to pay attention to the interests of their employees, host community, consumers and the general public. It further requires that companies demonstrate sensitivity to local social and cultural diversity issues, and mandates that the board report annually on the nature and extent of its social, ethical, safety, health and environmental policies and practices, including the application of options with the most benefit or least damage to the environment, opportunities created for physically challenged persons or disadvantaged individuals, the nature and extent of the company's social investment policy, and the company's policies on corruption and related issues.

The CBN Code requires that banks demonstrate a good sense of corporate social responsibility to their customers, employees, host communities and the general public, and encourages banks to make robust disclosures beyond the statutory requirements of the Companies and Allied Matters Act 2020 and the Banks and Other Financial Institutions Act.

The Nigerian Code of Corporate Governance requires highlights of sustainability policies and programmes covering social issues, such as corruption, community service (including environmental protection, serious diseases and matters of general environmental), social and governance initiatives, to be included in the corporate governance report in the company's annual report.

### CEO pay ratio disclosure

#### 42 Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

There is no direct requirement to disclose the pay ratio between CEOs and other employees of companies. However, various codes of corporate governance require that companies disclose their remuneration policies.

### Gender pay gap disclosure

#### 43 Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

The various corporate governance codes or regulations have no requirement for disclosure of information on the gender pay gap. The SEC Code requires that companies report annually on the nature and extent of employment equity and gender policies and practices, especially as they relate to executive-level opportunities.



## UPDATE AND TRENDS

## Recent developments

- 44 Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

On 7 August 2020, President Muhammadu Buhari assented to the Companies and Allied Matters Act 2020 (CAMA 2020), which repealed and replaced the Companies and Allied Matters Act 1990. CAMA 2020 seeks to provide for global best practice in doing business and enhancing transparency and shareholder engagement by, among other things, permitting the incorporation of a private company by one person, acceptance of electronic filings, virtual meetings, requiring the disclosure of the beneficiary of shares held in trust in the memorandum of association and providing mechanisms for identifying persons interested in shares.

The Financial Reporting Council of Nigeria issued Audit Regulations 2020 which came into force on 25 January 2021. The Regulations are aimed at providing a regulatory framework for auditors in Nigeria and ensure that the activities of auditors, audit committee members and other assurance service providers are regulated with a view to sustaining best ethical practices capable of promoting quality audit services. The regulations are to be applied in conjunction with applicable laws, codes, rules, standards, guidelines and requirements in relation to audit in Nigeria.

## Coronavirus

- 45 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Nigerian Stock Exchange (NSE) identified the legal and regulatory uncertainties that Nigerian businesses may face regarding convening virtual meetings, particularly in the wake of current economic and social constraints precipitated by the covid-19 pandemic, which underscore the need for companies to adopt a more practical style of holding meetings. As a result of this, the Nigerian Stock Exchange issued the Guidance on Companies' Virtual Board, Committee and Management Meetings (NSE Guidance).

The NSE Guidance advises listed companies to put in place precautionary measures to ensure the safety of all stakeholders during their annual general meetings and addresses virtual participation for the following meeting scenarios:

- board, committee and management meetings and briefings that require online presentations;
- board, committee or management meetings with some members physically present at the meeting venue, and others participating virtually; and
- board, committee or management meetings where all members are participating virtually.

To accommodate the emerging issues arising from the pandemic, the NSE undertook the following measures:

- on 23 March 2020, it granted listed companies a 60-day grace period for submitting their audited financial statements for the year ending 31 December 2019, extending the deadline to 29 May 2020;
- in its circular dated 17 April 2021, it further extended the due date for the submission of audited financial statements for listed companies with 31 March year-end by 60 days, from 29 June 2020 to 28 August 2020;

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- subject to the fulfilment of certain conditions, it waived the enforcement of the Rules Governing Transactions with Related Parties or Interested Persons to ensure that the operations of listed companies were not inadvertently constrained;
- on 15 May 2020, it granted an extension for Dealing Member Firms to submit their 2020 self-assessment form, quarterly returns, internal review reports and branch reports for the period ending 31 March 2020.

Similarly, the Central Bank of Nigeria, via a circular dated 30 April 2020 to other financial institutions, extended the timeframe for filing of audited financial statement by three months, from 30 April 2020 to 31 July 2020.

On 31 March 2020, the Securities and Exchange Commission issued a circular to all regulated entities and to the market. The circular was to the effect that all public companies were required to continue to make material disclosures to investors on the impact of covid-19 pandemic on their business operations and continue to disclose trends and outlooks for the company, and updates on implementation of business continuity plans on their website and on other relevant media. In the circular, the SEC also recommended that public companies that intended to conduct annual general meetings ensured that conduct during meetings complies with the provisions of CAMA 2020, the Investments and Securities Act, the SEC Rules and Regulations, and the relevant government and health circulars and guidelines issued in this regard.

Debt issuers are also expected to continue to engage trustees to ensure that relevant disclosures are provided. Trustees are required to provide updates to the SEC accordingly.

CAMA 2020 requires all public companies to hold annual general meetings within 15 months of the previous AGM. However, with restrictions imposed on social gatherings as a result of the pandemic, holding these meetings will be challenging, if not impossible. In a bid to reduce the mass gathering of persons, on 30 April 2020, the Corporate Affairs Commission (CAC) issued Guidelines on the holding of annual general meetings of public companies using proxies.

There is some controversy as to the legality of these guidelines. Some of their questionable aspects, which appear inconsistent with the provisions of CAMA 2020, include:

- a requirement to obtain the approval of the CAC before holding annual general meetings;
- ordinary business being the only business that can be transacted at annual general meetings;
- the requirement that a representative of the CAC must be present at the AGM; and
- public companies proposing a list of proxies from which members must select his or her proxy exclusively.

On 6 August 2020, the CAC also issued a public notice informing the public of its measures to limit physical visits to its offices to carry out company incorporation and post-incorporation activities. All incorporation, post-incorporation and other related activities are to be undertaken electronically and in some cases via courier.

Some suggested best practices that companies could adopt during this period and going forward are:

- Seek legal and professional advice as to any statutory deadlines which the authorities may, from time to time, extend to companies as a result of the pandemic.
- Consider insertion of clauses in articles of association that allow for the rightful convening of board, committee and management meetings via telephone, videoconferencing or hybrid formats (ie, providing in-person and virtual options). (CAMA 2020 does not provide for public companies to hold annual general meetings virtually – only private companies are allowed to hold general meetings virtually.)
- Identify a technology provider that will enable meetings to be held with minimal or no interruptions.
- Regularly engage with stakeholders (eg, shareholders, investors, employees and customers) and commit to transparency.

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