Corporate Governance 2019

Contributing editor
Holly J Gregory

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Getting The Deal Through

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Corporate Governance
2019

Contributing editor
Holly J Gregory
Sidley Austin LLP

Lexology Getting The Deal Through is delighted to publish the eighteenth edition of *Corporate Governance*, which is available in print and online at 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 new chapters on China, Korea and the Netherlands.

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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, of Sidley Austin LLP, for her continued assistance with this volume.

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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 as follows:

- the Companies and Allied Matters Act 1990 (CAMA);
- the Investment and Securities Act 2007 (ISA);
- the Financial Reporting Council of Nigeria Act 2011 (FRCA);
- the Banks and Other Financial Institutions Act 1991 (BOFIA);
- the Central Bank of Nigeria Code of Corporate Governance for Banks and Discount Houses in Nigeria (the CBN Code);
- the Insurance Act 2003;
- the National Insurance Commission Act 1997 (the NAICOM Act);
- the Financial Reporting Council of Nigerian Code of Corporate Governance 2018 (the FRCN Code);
- the Central Bank of Nigeria Code of Corporate Governance for Microfinance Banks in Nigeria 2019 (the CBN Code for MFBs);
- the Central Bank of Nigeria Code of Corporate Governance for Development Finance Institutions in Nigeria 2019 (the CBN Code for DFIs);
- the Central Bank of Nigeria Code of Corporate Governance for Finance Companies in Nigeria 2019 (the CBN Code for FCs);
- the NAICOM Code of Corporate Governance for the Insurance Industry in Nigeria (the NAICOM Code);
- the Code of Corporate Governance for Licensed Pension Operators (the PENCOM Code);
- the Rule Book of the Nigerian Stock Exchange;
- the Securities and Exchange Commission Code of Corporate Governance in Nigeria (the SEC Code);
- the Securities and Exchange Commission Rules and Regulations (the SEC Rules);
- the SEC Code of Conduct for Shareholders' Associations (SCCSA); and
- the Nigerian Communications Commission Code of Corporate Governance for telecommunication companies (the NCC Code).

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 groups or proxy advisory firms whose views are often considered?

The primary government entities responsible for making such 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 ISA, which regulates the capital market;
- the Central Bank of Nigeria (CBN), which regulates banks and other financial institutions in Nigeria;
- the National Insurance Commission (NAICOM), established under the NAICOM Act 1997, 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 2003 (NCA) which regulates the communications industry in Nigeria and ensures compliance with the NCA; and
- the Financial Reporting Council of Nigeria (FRCN), created under the FRCA, which is empowered to enforce and approve compliance with accounting, auditing, corporate governance and financial reporting standards in Nigeria. The FRCN is charged with ensuring good corporate governance practices in the public and private sector. The Directorate of Corporate Governance, created under the FRCA, has the responsibility to issue the code of corporate governance and guidelines and to develop a mechanism for periodic assessment of the code and guidelines.

There are several shareholder activist groups in Nigeria. These include: Progressive Shareholders' Association of Nigeria, Lagos Zone Shareholders' Association, Renaissance Shareholders' Association, Association for the Advancement of the Rights of Nigerian Shareholders, the Independent Shareholders' Association of Nigeria, Dynamic Shareholders' Association of Nigeria, Nigerian Shareholders' Solidarity Association, Proactive Shareholders Association of Nigeria and the Pacesetter Shareholders' Association of Nigeria. The various groups are more active in participating in annual general meetings, influencing decision-making at such meetings and protecting shareholders' rights.

It should be noted that the regulatory authorities such as the SEC and the FRCN adopt a consultative process in making regulations in order to obtain the views of various stakeholders, including shareholder groups. The SCCSA is one of the means through which the SEC seeks to

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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 in order for their views to be considered by the SEC during consultations on corporate governance issues.

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS

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, such 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 CAMA or the articles, are not bound to obey the directions or instructions of the shareholders in general meetings provided 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 the board and may ratify or confirm any action taken by the board. 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. Also, 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 in order to move and pass such resolution. The company shall also give its members notice of such 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, 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 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 such 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.

Also, 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 such votes, in addition to the one vote per share necessary to preserve the existing ratio that the votes exercisable by the holders of such preference shares bear to the total votes exercisable at the meeting. The right of members to vote upon their share 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. It should be noted, however, that until the name of a person having shares in a company has been entered as a member in the register of members, which companies are statutorily required to maintain, such person will not be deemed a member of the company and may therefore not attend meetings of the company or be allowed to vote at such 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.

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CAMA does not provide for virtual meetings. By the provisions of CAMA, all statutory and annual general meetings shall be held in Nigeria and the notice calling for such meetings should contain the place for the meetings. An extraordinary general meeting has no such restrictions and therefore can be a virtual meeting. 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 one-tenth of the shareholding (or voting rights in a company not having 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 or more than 21 days prior to the meeting) outlining his or her intention to propose such 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 CBN Code, the CBN Codes for MFBs, DFIs and FCs, the FRCN Code, the SEC Code and the NAICOM Code each 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. 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 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 in effective 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, either directly or through a nominee, shares in a public company that entitles the shareholder to exercise 10 per cent of the unrestricted voting rights at any general meeting must notify the company of his or her interest. The duty also arises where the shareholding falls below 10 per cent.

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 paid or 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 perpetrate illegality. A shareholder may also be liable where, to his or her knowledge the company operates with less than two directors.

CORPORATE CONTROL

Anti-takeover devices

10 | 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 ISA 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

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

Subject to any limitations in the articles of a company, the power to issue shares is vested in the company. The power is exercised by the general meeting unless the articles specify otherwise, and the general meeting may grant the authority to issue new shares to the board.

The articles of a company should determine whether shareholders have pre-emptive rights to acquire newly issued shares. Where the articles do not provide for such rights, none can be said to exist. The articles of private companies usually provide for pre-emptive rights.

Restrictions on the transfer of fully paid shares

12 | 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. Another restriction employed are clauses in a company's articles giving the board of directors and, in some cases, the shareholders a discretion to refuse to approve or register 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

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

There are certain situations in which a company may repurchase its shares. These are where the company does so in order to settle a debt

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or claim against the company, to eliminate fractional shares, where the company has entered into an agreement to purchase shares from an officer or employee of the company or in order to satisfy the claims of a dissenting shareholder, or in compliance with a court order in the course of an arrangement or compromise. 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 provision of CAMA on repurchase of shares. Any public company seeking to repurchase its own shares is also required to obtain the approval of the SEC and comply with the SEC Rules.

Where the shares are to be repurchased by the company, the shares may only be repurchased out of profits that would have been otherwise distributed as dividends or out of the proceeds from a fresh issue of shares made specifically for the purpose of the purchase of such shares.

Further, redeemable shares shall not be purchased at a price greater than the lowest price at which they are redeemable.

Dissenters' rights

14 | Do shareholders have appraisal rights?

The ISA provides that where the approval of nine-tenths 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 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.

THE RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

15 | 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 or single-tier, comprising both executive and non-executive directors.

The SEC Code provides that the board should be of a size relative to the size and complexity of the operations of the company. It further recommends that the board of a public company should be made up of at least five directors but sets no upper limit for the number of directors on a board. The SEC Code further recommends that the majority of the board members should be non-executive directors and at least one should be an independent director.

Board's legal responsibilities

16 | 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

17 | Whom does the board represent and to whom does it 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

18 | Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed?

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

19 | Do the board's duties 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 such 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

20 | 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

21 | 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 the exercise of such responsibilities so delegated, conform to any directions or regulations of the board. However, such delegation should not be done in such a way that it amounts to an abdication of duty.

The SEC Code provides that it is the responsibility of the board to facilitate the effective discharge of its duties and responsibilities through committees. While membership of these committees is exclusively reserved for board members, senior managers are allowed to be in attendance during their meetings to provide all necessary information needed by the committee to make informed decisions on behalf of the board. Even after delegating its powers, the overall responsibility of directing and managing the affairs of the company still ultimately lies with the board.

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Non-executive and independent directors

22 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?

The SEC Code recommends that there be at least five members of the board with a mix of both executive and non-executive directors. The CBN Code and the SEC Code provide that the number of non-executive directors on the board should exceed the number of executive directors. The CBN Code provides that for banks, at least two of the non-executive directors should be independent directors, and for discount houses at least one of the non-executive directors should be an independent director. The SEC Code provides for 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, that is, one whose 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 other consulting firm that have material association with the company and has not been a partner or an executive of any such firm for three financial years preceding his or her appointment.

The PENCOM Code describes 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 provides that the board of insurance companies should have a minimum of seven and a maximum of 15 members and that the maximum number of executive directors should not exceed 40 per cent of the members of the board. The PENCOM Code provides that the number of non-executive members (excluding the chair) of the board shall equate to the number of executive directors. The NAICOM Code and PENCOM Code each provide for a minimum of one independent director. The CBN Codes for MFBs, DFIs and FCs and the FRCN Code also provide that the number of non-executive directors on the board should exceed the number of 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.

Board size and composition

23 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?

Generally, persons of unsound mind, persons under the age of 18, persons 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 are criteria that must be met to be a director in a company and any person who is or proposes to be a director of a company must meet these criteria. A company may by its articles require directors to hold a specified number of shares. Failure of a director of such a company to obtain the share qualification within two months of his or her appointment will result in the person vacating his or her office until he or she obtains the shareholding qualification. The PENCOM Code provides that a director of a pension fund administrator (PFA) must not be a director, an employee, a principal officer or shareholder in a pension fund custodian (PFC) with which the PFA conducts business.

Managing directors and key management operating in certain industries may be required by the regulations and guidelines governing those industries to have specific qualifications. The SEC Code permits public companies to have a governance or remuneration committee whose function is to establish the criteria for board and board committee membership and to periodically evaluate the skills, knowledge and experience required 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 MFBs. DFIs and FCs. The NAICOM Code emphasises competence and integrity.

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

A person over 70 years of age or more 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 and failure to do so amounts to an offence under 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 as a board member.

CAMA requires every company to have a minimum of two directors at all times but does not provide for the maximum number of directors a company may have. CAMA provides, however, that the number of directors shall be determined in writing by the subscribers of the 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 may also set the minimum and 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 while directing 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

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employ simple and effective methods of work to enable each director to feel a personal responsibility and commitment to the company and the board is to take into cognisance the scope and nature of the operations of the company.

The NCC Code requires the composition of a board to include a mix of skills, diversity, experience and gender. The number of directors should reflect the scale, size, complexity and reach of the business of the company and the skills and resource requirements of the company have to be taken into consideration. A majority of the board should be non-executive directors with at least one independent director holding not more than 0.1 per cent of the shareholding directly or indirectly in the company. One-third of the non-executive directors is also required to retire yearly by rotation subject to reappointment and for larger companies, non-executive directors should not remain on the board for a continuous period in excess of 15 years.

The CBN Code for MFBs requires that the boards of MFBs shall be a minimum of five and maximum of seven for Unit MFBs; a minimum of five and maximum of nine for State MFBs; and a minimum of seven and maximum of 12 for National MFBs, respectively. The Code prescribes that the MD or CEO shall be the only executive director of a Unit MFB. The board of MFBs shall consist of a minimum of one independent non-executive director (INED) for Unit MFBs and state MFBs and two for National MFBs. However, a state MFB with a board size of more than seven members shall be required to have a minimum of two INEDs. The CBN Code for DFIs requires that the board of a DFI shall be a minimum of seven and a maximum of 11 or in accordance with the law establishing the institution. The CBN Code for FCs requires that the board of any FC shall be limited to a minimum of five and a maximum of nine members.

All the CBN Codes for MFBs. DFIs and FCs provide that not more than two members of a family shall be on the board at the same time. The expression 'family' includes director's spouse, parents, children, siblings, cousins, uncles, aunts, nephews, nieces and in-laws. All three Codes also provide that the board must be constituted in such a way that the numbers of non-executive directors exceeds the number of executive directors.

The FRCN Code does not provide for a minimum or maximum number of directors. It merely recommends that the board should be of a sufficient size to effectively undertake and fulfil its business; to oversee, monitor, direct and control the company's activities; and be relative to the scale and complexity of its operations.

Vacancies on the board may be filled by the shareholders of a company in a general meeting. The board of directors of a company is also empowered to appoint new directors to fill casual vacancies created by death, resignation, retirement or removal of a director. Such appointments are, however, subject to ratification by the shareholders at the next general meeting.

Board leadership

24 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?

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 be held by different individuals. Also, the chair of the board should be a non-executive director in order to ensure the effective operation of the board. While the role of the CEO 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.

The CBN Code and the NAICOM Code make it mandatory that no one person shall hold or combine the office of chair of the board and that of 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 FRCN Code and the NCC Code also require the position of the chair of the board and the CEO to be occupied by two separate individuals. All the CBN Codes for MFBs. DFIs and FCs maintain the same position as the CBN Code.

Board committees

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

Every public company is required to set up an audit committee consisting of an equal number of directors and shareholders' representatives up to a maximum of six members. Members of an audit committee are not entitled to remuneration and are subject to re-election annually. The functions of the 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 with regard to 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. The SEC and CBN Codes provide that at least one member of the committee should be financially literate. The SEC Code further provides that, when necessary, external professional advice may be sought by the committee.

The board of a public company is permitted by the SEC Code to establish a risk management committee and a governance or remuneration committee in addition to its audit committee. The risk management committee is to serve the function of assisting in the overseeing of the risk profile and the risk management framework to be determined by the board, while the governance or remuneration committee serves the function of periodically evaluating the skills and experience required by the individual members of the board and the board as a whole and making recommendations on the compensation structure for the executive directors of the company.

Banks and discount houses in Nigeria are directed by the CBN Code to establish a committee responsible for the overseeing of risk management and audit functions and a board governance and nominations committee. The CBN Code further provides that the risk management and audit functions may be carried out by one committee, particularly in small institutions. The CBN Code proscribes the chair of the board from being a member or chair of any committee and provides that board committees must be headed by non-executive directors. The board remuneration committee must have at least two non-executive directors, while the board audit committee must have at least three members consisting only of non-executive directors and be headed by an independent director.

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The CBN Codes for MFBs, DFIs and FCs maintain the same position as stated in the CBN Code. However, these codes provide for an additional committee called the board credit committee. With respect to a board credit committee, the Codes for MFBs and FCs merely state that the committee shall comprise members knowledgeable in credit analysis. The Codes for MFBs and FCs requires that all board committee have a charter to be approved and reviewed every three years or as may be determined by the CBN from time to time. The CBN Code and the CBN Code for DFIs merely state that all board committees shall each have a charter to be approved by the CBN. The CBN Codes for MFBs, DFIs and FCs make no provision for the composition of the remuneration committee. Last, the Codes for MFBs and FCs provide that the board shall not replace members of the board audit committee and external auditors at the same time.

The PENCOM Code requires PFAs and PFCs to constitute a nominating committee (NC) whose duty is to make recommendations to the board on all board appointments. The NC shall consist of three directors including the chair of the board and an independent director.

The FRCN Code recommends the establishment of the same committees provided for under the CBN Code. The FRCN Code further provides that each committee should comprise at least three members and individual board committee charters will indicate where INEDs are required.

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

Board meetings

26 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, FRCN, CBN, SEC, NCC Codes and the CBN Codes for MFBs, DFIs and FCs recommend that board meetings be held at least quarterly in each financial year. The CBN Codes for MFBs, DFIs and FCs, however, add that the minutes of meetings of the board or board committees shall be properly written in English language, adopted by the board or board committee and signed off by the chair and secretary, pasted in the minutes book and domiciled at the head office of such entities. The Codes also made provision for the constitution of the meetings. The board or board committee meetings shall be deemed to be duly constituted where two-thirds of members are present, provided that a majority of directors at the meeting are non-executive directors. The NAICOM Code provides that the board shall meet not less than four times in a year.

Board practices

27 Is disclosure of board practices required by law, regulation or listing requirement?

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 shall 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, notice of his or her election or re-election shall disclose the age of the person to the shareholders.

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 shall be forwarded to the CBN not later than 31 March of the following year.

In addition, the SEC Code provides that the board of a public company is to include a corporate governance report in its annual reports, to be circulated to members and the regulatory authorities. The corporate governance 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. The SEC Code goes further to provide 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 as well as its opinion on the effectiveness of the process.

Public companies are also to 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. Directors are required by the SEC Code to disclose any other directorship positions in other companies so that the members of the company can take into consideration a director's other responsibilities in assessing his or her suitability as a director in the company.

The directors are required to disclose their shareholdings in the company. Directors are also required to disclose loans made by the company to directors, their interest in contracts involving the company and any conflicts of interest in relation to the company.

Remuneration of directors

28 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?

CAMA provides that the remuneration of directors should be determined by the company in a general meeting, while the SEC Code provides that the remuneration of executive directors should be set by a remuneration committee consisting wholly of non-executive directors. The SEC Code 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 remuneration for directors, the board should ensure that they are not priced at a discount except with the approval of the SEC. 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

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Codes for MFBs, DFIs and FCs 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.

The CBN 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 of two consecutive terms. In relation to other non-executive directors, their tenure is limited to a maximum of three terms of four years each. With respect to the tenure of the chief executive officer of a bank, the CBN Code allows for 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, before a service contract for a term beyond five years is executed, it must be approved by a resolution of the company. The SEC Code, while subjecting the tenure for directors to the provisions of CAMA, recommends that all directors should be submitted for re-election at regular intervals of at least once every three years. The SEC Code 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.

Companies are prohibited from making loans to directors and are also not allowed to guarantee such loans. There are, however, two exceptions provided in CAMA: the company can grant a loan to a director where such loan will enhance the performance of his or her duties in the company; and the company can also grant a loan to a director where money lending is one of its 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. Such insider-related credits include transactions involving directors, shareholders, employees and their related interests.

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

29 | 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. In addition to the response stated in the penultimate paragraph of question 28, banks are required by the CBN 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 by security, maturity, performance, provision, interest-in-suspense and name of borrowers in their financial statements.

D&O liability insurance

30 | 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 such insurance, though some companies, in keeping with international best practices, take out liability insurance for their directors and officers.

Indemnification of directors and officers

31 | 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.

Exculpation of directors and officers

32 | 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 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.

Employees

33 | What role do employees have in corporate governance?

The CBN and SEC Codes require every public company to establish whistle-blowing procedures that encourage staff to report unethical activity or breaches of corporate governance to, in the case of the CBN Code, the bank and CBN and under the SEC Code, the company. 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 to the director and other financial institutions' supervision department no later than seven days after the end of the relevant period. The ISA 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 SEC 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 FRCN Code is in tandem with the stipulations of the CBN Code and SEC Code.

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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 (WBGP) provides that the directors, management, employees and any other persons that have dealings with a PFA or PFC shall have the responsibility to report breaches to PENCOM and requires that all PFAs and PFCs undertake not to victimise employees that comply with the WBGP. Where victimisation nonetheless occurs, the WBGP provides that PENCOM shall employ appropriate regulatory tools to offer redress to the employee concerned.

Board and director evaluations

34 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?

Under the NCC Code, the board is required to establish a system for periodic evaluation of its own performance, that of its committees, chair, chairmen of its committees and individual directors. This should be done at least annually, and a statement of evaluation is required in the company's annual returns to state whether evaluation had been conducted during the period under the review. The evaluation is to be an objective and independent process. The CEO appraisal is to be done by the board or such committee of the board made up of non-executive directors.

The SEC Code also requires a board to establish a system to undertake an annual and rigorous evaluation of its own performance, its committees, chair and individual directors. The chair is to oversee the evaluation of the performance of the CEO while the CEO is to do the same for the executive directors. The result of the evaluation is to be communicated and discussed by the board as a whole while that of the independent directors is to be communicated and discussed by the chair with them. The board may engage the services of external consultants to facilitate the evaluation. The cumulative result of the performance evaluation of the board and independent directors is to be used as a guide for re-election. The SEC Code further recommends training for any director whose performance is unsatisfactory or where not feasible, removal from office.

The PENCOM Code has similar provisions to the SEC Code and NCC Code and requires that the outcome of the evaluation shall be prepared in two copies, one of which must be submitted to the Pension Commission along with the company's annual report on corporate governance.

The CBN Code requires an annual formal assessment of the effectiveness of the board as a whole and the contribution by each individual director (including the chair) to the effectiveness of the board. The Nomination Committee is to recommend the evaluation procedure and propose objective performance criteria, which should be approved by the board. The issues to be evaluated should include attendance at meetings, contributions to discussions at board meetings and board committee meetings, business referrals or support of the institution, public standing of the director and the beneficial effect of this on the business of the institution. The performance indicators should include the compliance status of the institution, the overall performance of the institution, regularity of board meetings and the overall contribution of the board to the performance of the institution.

The CBN Codes for MFBs and FCs provide 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 shall be forwarded to the CBN not later than 31 March of the following year.

The FRCN Code provides that the board should establish a system to undertake a formal and rigorous annual evaluation of its own performance, that of its committees, the chair and individual directors. This process should be facilitated by an independent external consultant at least once every three years.

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 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, etc.

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

35 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 subject to the payment of prescribed fees.

Company information

36 What information must companies publicly disclose? How often must disclosure be made?

The annual reports and accounts consisting of the directors' report, auditor's report and financial statements are to 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, appointment of receivers, appointment of 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 SEC from time to time. Such disclosures include:

- information on acquisitions of other companies or businesses;
- preliminary results for any year, half-year, quarter and comparative figures in respect of the profits before and after taxation, even

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if this calls for qualification that such figures are provisional or subject to audit;

- 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 shall 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 CBN and SEC Codes also require the board to disclose its risk management policy in its annual report.

HOT TOPICS

Say-on-pay

37 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 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 SEC and CBN Codes stipulate that only the non-executive directors should be involved in decisions regarding the remuneration of executive directors.

Shareholder-nominated directors

38 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 at the registered address of a company a signed notice in writing of his or her intention to propose a person for election to the office of a director in place of a retiring director at a general meeting. The notice must be given not less than three days or 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 not less than one-twentieth 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 propose 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 where 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 notice of the meeting and where not practicable, 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 deposited or tendered, which 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

39 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 through the holding of 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 such engagements. Some quoted companies also organise pre-AGM forums or dinners for directors, management, investors, major customers, etc to interact.

The SEC Code provides that the general meetings of the 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 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 CBN Code, banks are encouraged to communicate with their shareholders via their website. Information to be provided through this means shall include major developments in the bank, risk management practices, executive compensation, local and offshore branch expansion, establishment of investment in subsidiaries and associates, board and top management appointments and sustainability initiatives and practices.

The CBN Codes for MFBs, DFIs and FCs are in tandem with the position under the CBN Code. These codes, however, add that the operators are encouraged to communicate with shareholders via the website, newsletters, annual general meetings and extraordinary general meetings.

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

The NCC Code provides that there should be a dialogue and engagement between the board and the shareholders to align appreciation and attain the mutual understanding of corporate objectives of telecoms companies.

Sustainability disclosure

40 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 its employees, host community, consumers and the general public. It further requires that companies demonstrate sensitivity to local social and cultural diversity issues. The SEC Code mandates that the board report annually on the nature and extent of its social, ethical, safety, health and environmental policies and practices including 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 CAMA and BOFIA.

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CEO pay ratio disclosure

41 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 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

42 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 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

43 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.

In a circular dated 26 October 2018 the Central Bank of Nigeria issued the Codes of Corporate Governance with respect to the following six financial institutions:

- microfinance banks;
- development finance banks;
- primary mortgage banks;
- mortgage refinance companies;
- finance companies; and
- bureaux de change.

These Codes aim to define minimum acceptable corporate governance standards, enhance good governance practices, engender public confidence to attract investments and promote high ethical standards, efficiency and transparency in the sub-sectors. Although the effective date of each Code is 1 December 2018, full implementation of the Codes came into effect from 1 April 2019.

The Financial Reporting Council of Nigeria also issued the Nigerian Code of Corporate Governance 2018. The Nigerian Code of Corporate Governance 2018 seeks to institutionalise corporate governance best practice in Nigerian companies. The Code sets to promote public awareness of key corporate values and ethical practices that will enhance the integrity of the business environment and is aimed at companies of varying sizes and complexities across different industries. The Code adopts a principle-based approach in specifying minimum standards of practice that companies should adopt. This is welcomed as MSMEs will be more amenable to adopting the principles of the Code and enhance their businesses. Companies are required to adopt the 'comply and explain' approach in reporting on compliance with this Code and therefore entities would have to demonstrate how activities they have undertaken best achieve the Code's principles. The implementation of this Code will be monitored by the FRCN through the sectoral regulators and registered exchanges that are empowered to impose appropriate sanctions.

A proposed Companies and Allied Matters (Repeal and Re-enactment) Bill (CAMA Bill) has been passed by both houses of the National Assembly. It is currently awaiting presidential assent to become law. The CAMA Bill is being driven by the Presidential Enabling Business Environment Council (PEBEC), which was set up in July 2016 to oversee Nigeria's business climate reform agenda.

The CAMA Bill contain provisions that are geared towards bringing Nigeria's Commercial Law in tandem with global and current realities. Some of the notable innovations relating to the corporate governance of a company are briefly highlighted below. The CAMA Bill also seeks to impose stiffer administrative penalties for non-compliance.

Pursuant to the provisions of the CAMA Bill, the Corporate Affairs Commission (CAC) will be empowered to amend, through its regulations, the form of the memorandum of association adopted by companies. The CAC would also be empowered to prescribe model articles of association that would apply to companies except where a company chooses to register its preferred articles of association.

To further reduce or eliminate entry barriers for small companies, the CAMA Bill seeks to reduce certain compliance requirements for small companies, such as: provision for single directorships; exemption from appointing a statutory auditor if the company has not carried on any business activity or whose turnover in a financial year is not more than 10 million naira and the balance sheet total is not more than 5 million naira; exemption from convening annual general meetings; exemption from mandatory provision for appointment of company secretary; and the discretionary use of common seal.

The CAMA Bill also allows a private company to hold its general meetings electronically provided it is done in line with its articles of association. This is a welcome development, as people would be able to participate in meetings anywhere they are held – currently CAMA requires that annual general meetings be held In Nigeria.

With respect to disclosure of persons with significant control, the CAMA Bill amends the requirement to notify the company to extend it to both private and public companies, as opposed to the initial limit of only public companies, and reduces the threshold from 10 to 5 per cent for any acquisition or divestment of shares. The CAMA Bill also requires the company to notify the CAC of disclosure of a substantial shareholder in a public company.

The CAMA Bill also requires the disclosure by persons who hold shares (which entitles them to exercise at least 5 per cent or such amount as the CAC may by regulation prescribe from time to time) of

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the unrestricted voting rights at any general meeting of the company other than as the beneficial owner to indicate to the company in writing the particulars of the identity of the persons interested in the shares and whether such persons are parties to any agreement or arrangement relating to the exercise of any rights conferred by the holding of the shares. The company upon receipt of such information is required to inscribe such information in its register of members and also disclose same in its next annual returns filings made to the CAC. The required disclosure is geared towards ensuring transparency as to the ownership of companies in Nigeria.

The CAMA Bill prohibits a person from being a director in more than five public companies at a time. It requires that any person who is a director in more than five public companies should resign from being a director from all but five of the companies at the next annual general meeting of the companies after the expiration of two years from the commencement of the law. The current CAMA places no restriction on multiple directorship and requires that holding of multiple directorship should not lead to a derogation of fiduciary duties by a director. This amendment to the CAMA bill is introduced with the expectation that it would reduce situations of conflicts of interest, improve directors' efficiency and performance as well as increase transparency in the corporate sector.

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